

BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                     )  
  )  
Business Meeting                    )  
  )  
\_\_\_\_\_                              )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 19, 2001  
10:00 A.M.

Reported by:  
Valorie Phillips  
Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Michal Moore

Robert A. Laurie

Robert Pernell

Arthur Rosenfeld

James Boyd, Ex Officio

STAFF PRESENT

Steve Larson

Jonathan Blees

Dick Ratliff

Jim McKinney

Jim Bartridge

Paul Kramer

Judy Grau

Bill Pennington

Scott Matthews

Fernando DeLeon

Mike Jaske

Richard Buell

Mike Sloss

Mike Batham

Alan Argentine

Andrea Gough

STAFF PRESENT

Tony Brasil

Cecile Martin

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Ray Elliott, Mayor  
Bill Woolley, Mayor Pro Tem  
City of Avenal

Ann L. Trowbridge, Attorney  
Jane E. Luckhardt, Attorney  
Downey, Brand, Seymour and Rohwer, LLP

Greg Lamberg  
Mike Hatfield  
Calpine Corporation

Tracy Buck-Walsh, Attorney  
William Funderburk, Attorney  
Tyco Adhesives and Shurtape  
Stanzler, Funderburk, & Castellon,

Manuel Alvarez, Director  
Southern California Edison Company

Paula Ham-Su  
Pacific Gas and Electric Company

Ted Roberts, Regulatory Attorney  
San Diego Gas and Electric

Mark A. Seedall, Director  
Duke Energy North America, LLC

Jeffery Harris, Attorney  
Steven Kelly, Policy Director  
Independent Energy Producers Association

Christine Jun, Attorney  
Cogeneration Association of California  
Energy Providers and Users Coalition

Pat Fleming  
Semptra Energy

## I N D E X

	Page
Proceedings	1
Items	
1 Consent Calendar	2
2 Avenal Energy Project	3
3 Avenal Energy Project - Committee	10
4 Inland Empire Energy Center	11
5 Inland Empire Energy Center - Committee	13
6 Tesla Power Project - (moved to 1/9/02)	14
7 Tesla Power Project - (moved to 1/9/02)	14
8 Central Valley Energy Center Project - (moved to 1/9/02)	14
9 Central Valley Energy Center Project - Committee - (moved to 1/9/02)	14
10 Construction and Use of Emergency Generators Report	14
11 Tyco Adhesives	17
12 Department of General Services	123
13 Title 20 Data Collection Regulations	124/131
14 Renewable Guidelines - (moved to 1/19/02)	124
15 Energy Conservation Assistance Act Account	124
16 Energy Conservation Assistance Act Account	124
17 Alternative Fuels Infrastructure Programs	126
18 Renewable Resources	154
19 Clean Energy Systems, Inc. (CES)	127

## I N D E X

	Page
Items	
20 Gas Technology Institute	127/129
21 Lawrence Livermore National Laboratory	127/129
22 Bioresource Consultants	155
23 University of California, Davis	156
24 Building Industry Institute	157
25 San Diego University Foundation - (moved to 1/9/02)	157
26 City of Oxnard	158
27 California State University, Chico, Research Foundation/Instructional Media Center	159
28 Laurits R. Christensen Associates, Inc.	159
29 Brian T. Castelli	160
30 Siting Regulations	105
31 Enforcement of Executive Director Data Requests	66
32 Minutes	163
33 Energy Commission Committee and Oversight	164
34 Chief Counsel's Report	165
35 Executive Director's Report	165
36 Public Adviser's Report	165
37 Public Comment	165
Adjournment	165
Certificate of Reporter	166

1 P R O C E E D I N G S

2 10:00 a.m.

3 CHAIRMAN KEESE: I call this meeting of  
4 the Energy Commission to order. Mr. Boyd, would  
5 you lead us in the Pledge, please.

6 (Whereupon, the Pledge was recited in  
7 unison.)

8 CHAIRMAN KEESE: Thank you and we will  
9 be making some adjustments in the agenda as we go  
10 on this morning, depending on how we meet our time  
11 constraints.

12 We will be breaking at noon for a little  
13 ceremony to honor Kent Smith, who is retiring  
14 after 20 years as our Assistant Executive  
15 Director. So we will be breaking at noon and we  
16 will be coming back after that to complete  
17 whatever we haven't completed. Because  
18 Commissioner Pernell has an obligation out and  
19 will not be back after noon, we're going to  
20 adjust, as necessary, to handle what we feel are  
21 the more controversial items this morning.

22 With that, I would like a motion to add  
23 two items to the consent calendar. The Office of  
24 Emergency Service, approval of contract 150-00-  
25 004, amendment 3, and the Western Governors

1 Association, approval of contract 150-99-005,  
2 amendment 2.

3 COMMISSIONER MOORE: Move consent, as  
4 amended.

5 COMMISSIONER LAURIE: Second.

6 CHAIRMAN KEESE: Well, we've got to put  
7 it on the agenda first. So I'm going to take that  
8 as a motion to add it to the agenda.

9 COMMISSIONER MOORE: And pass consent,  
10 as added.

11 CHAIRMAN KEESE: Okay.

12 COMMISSIONER LAURIE: Mr. Chairman, it's  
13 been moved and seconded, but we need the finding  
14 to add that for some reason it was not available  
15 to be agendized when the agenda was printed.

16 So, Mr. Larson, is that the correct  
17 fact, that the information was not available at  
18 the time that the --

19 MR. LARSON: That's correct.

20 COMMISSIONER LAURIE: Okay. I need to  
21 request that that be added to the motion, Mr.  
22 Chairman.

23 COMMISSIONER MOORE: Accept.

24 CHAIRMAN KEESE: Accepted by the  
25 mover --

1 COMMISSIONER ROSENFELD: Second.

2 CHAIRMAN KEESE: -- and the seconder.

3 Motion by Commissioner Moore, second by  
4 Commissioner Rosenfeld that we add this to the  
5 agenda.

6 All in favor?

7 (Ayes.)

8 CHAIRMAN KEESE: Opposed?

9 And now, on the consent calendar, motion  
10 by Commissioner Moore, second by Commissioner  
11 Rosenfeld.

12 All in favor?

13 (Ayes.)

14 CHAIRMAN KEESE: Opposed? Adopted.

15 Item 2, Avenal Energy Project.

16 Commission consideration of the Executive  
17 Director's data adequacy recommendation for the  
18 Avenal Energy Project application for  
19 certification. Good morning.

20 MR. MCKINNEY: Good morning, Chairman  
21 Keese, Commissioners, Mr. Boyd. My name is Jim  
22 McKinney, I'm the Staff Project Manager for the  
23 Avenal siting case; here to report on the second  
24 data adequacy review for this project.

25 On October 9 Duke Energy filed an



1 application for certification using the 12-month  
2 review process for a 600 megawatt power plant in  
3 the City of Avenal, which is southwest San Joaquin  
4 County.

5 At the November 14 business meeting  
6 staff recommended that the project be found not  
7 data adequate because of insufficient information  
8 in eight subject areas.

9 The project, a 600 megawatt combined  
10 cycle, wet cooled plant with relatively short  
11 linear facilities. The proposed cooling water  
12 source is inland surface water from the Kern  
13 County Water Agency via the State Water Project  
14 Canal. Backup cooling water is local groundwater.  
15 The site is within the Avenal City limits. It is  
16 zoned industrial, although the current land use is  
17 irrigated agriculture.

18 The staff has completed the review of  
19 the supplemental information that Duke has  
20 provided, and we now recommend that the project be  
21 found data adequate.

22 I would like to add that the staff  
23 counsel and contractors for Duke Energy were very  
24 cooperative and forthcoming in providing the  
25 information that staff requested to complete our

1 data adequacy review.

2 With that, on behalf of staff I'd like  
3 to recommend that this project be found data  
4 adequate and that a Committee be assigned for the  
5 12-month review process.

6 CHAIRMAN KEESE: Thank you. Any public  
7 comment? Do we have a motion -- oh, I'm sorry.  
8 We have Mr. Elliott and Mr. Woolley for the City  
9 of Avenal.

10 MAYOR ELLIOTT: Thank you,  
11 Commissioners. My name is Ray Elliott. I'm from  
12 the City of Avenal. I am the Mayor.

13 On behalf of the City Council and the  
14 City of Avenal I'm here to encourage you to issue  
15 the permit for the construction of the Duke Avenal  
16 Power Plant. And we are really excited about  
17 getting this started, so all the help we can get  
18 from you folks will certainly be appreciated.

19 Thank you very much.

20 CHAIRMAN KEESE: Thank you. I don't  
21 think we're granting the permit today, but --

22 (Laughter.)

23 MAYOR ELLIOTT: No, I understand that,  
24 but the timing is what we're looking for, too.

25 CHAIRMAN KEESE: Thank you.

1                   MAYOR PRO TEM WOOLLEY: Good morning,  
2                   Mr. Chairman and Members of the Commission. I  
3                   would just like to echo what Mr. Elliott has said,  
4                   that the City of Avenal does support this --

5                   CHAIRMAN KEESE: Your name, I'm sorry,  
6                   for the record.

7                   MAYOR PRO TEM WOOLLEY: Bill Woolley,  
8                   Mayor Pro Tem of the City of Avenal.

9                   I would like to echo what Mr. Elliott  
10                  has said, that the City of Avenal does support  
11                  this project. And we, too, as a City, have found  
12                  Duke to be very cooperative in providing us with  
13                  any information that we needed. A very good  
14                  company to work with, and we're looking forward to  
15                  getting this permitting process completed and  
16                  getting the project done.

17                  Thank you very much.

18                  CHAIRMAN KEESE: Thank you. Do you have  
19                  something to --

20                  MS. LUCKHARDT: This is Jane Luckhardt  
21                  from Downey Brand on behalf of Duke Energy  
22                  Avenal --

23                  CHAIRMAN KEESE: I'll let you speak in  
24                  just a second. Do you have -- why don't you speak  
25                  after the vote.

1 Do I have a motion?

2 MR. BLEES: Mr. Chairman.

3 CHAIRMAN KEESE: Yes.

4 MR. BOYD: A comment before you accept  
5 the motion. I have no problem with this proposal,  
6 but I just want to note for the record that I  
7 wince every time I get a report about us dipping  
8 into our precious surplus waters of the State of  
9 California for cooling water purposes.

10 And I know there's no options -- well,  
11 there are options, but this -- I agree with the  
12 staff's recommendation. I just want to point out,  
13 as Mr. Larson knows, months ago we met with the  
14 Department of Water Resources on this subject, and  
15 there's an ongoing effort to continue to reconcile  
16 power plant cooling water use and, you know, and  
17 the water supply of the State of California, and  
18 look for every conceivable alternative and option,  
19 to use reclaimed waters, or dry cooling, et  
20 cetera, et cetera.

21 And I just point out that that issue  
22 still -- it is a major concern to those of us who  
23 worry about the broader spectrum of resources, and  
24 who have an unfortunate intimate knowledge of how  
25 precious and scarce water is in California these

1 days.

2 So, just a note.

3 CHAIRMAN KEESE: Thank you.

4 COMMISSIONER MOORE: Mr. Chairman, I'm  
5 going to offer a motion to accept the Executive  
6 Officer's recommendation. And in making that  
7 motion I will simply comment with regard to Mr.  
8 Boyd's point that we have now a growing body of  
9 information that allows the Commission to choose  
10 between cooling methods. And we have a tremendous  
11 body of knowledge that came out of the Sunrise  
12 case that can be used. It's not all that far  
13 away, and provides a basis for whatever decision  
14 the presiding member might make in the future on  
15 this.

16 But I would say that there are  
17 alternatives that will necessarily be considered,  
18 and that point will come up as a matter of course  
19 very seriously in these hearings.

20 COMMISSIONER LAURIE: Mr. Chairman, I'm  
21 sorry, there's a motion?

22 COMMISSIONER MOORE: There is a motion.

23 CHAIRMAN KEESE: Did we get a motion  
24 from Commissioner --

25 COMMISSIONER MOORE: Moore.

1 CHAIRMAN KEESE: -- Moore. And a second  
2 from?

3 COMMISSIONER ROSENFELD: Second.

4 CHAIRMAN KEESE: -- Commissioner  
5 Rosenfeld.

6 Commissioner Laurie.

7 COMMISSIONER LAURIE: Mr. Chairman, on  
8 that point, we've discussed water policy in  
9 individual cases. And I believe where we stand  
10 today is absent an issue or a finding of negative  
11 impact, as determined by our environmental  
12 analysis, there is no basis for demanding,  
13 demanding an alternative water solution.

14 So, as we get into each individual  
15 project, and individual water districts report no  
16 significant impact, well, it really binds our  
17 hands unless there is information dealing with  
18 cumulative impacts on a regional or a statewide  
19 basis.

20 And that data is really not available,  
21 suggesting a requirement that we go to alternative  
22 sources. Thus a statewide policy dealing with  
23 more in the Energy Commission would be invaluable.

24 And so I look forward to a continuation  
25 of our discussions with the appropriate water

1 agencies.

2 CHAIRMAN KEESE: Thank you. Any further  
3 comment up here?

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? Adopted five  
7 to nothing.

8 Ms. Luckhardt, do you have something to  
9 say?

10 MS. LUCKHARDT: I just wanted to thank  
11 staff for their efforts in working with us to help  
12 make this project data adequate by the end of this  
13 year. And express our belief that our water  
14 source is something that you will find in the  
15 discovery process to be a very solid and  
16 defensible use and source of the water that we  
17 have proposed.

18 CHAIRMAN KEESE: Thank you. All right,  
19 item 3. Possible approval of a Committee for the  
20 Avenal Energy Project application for  
21 certification.

22 COMMISSIONER PERNELL: Mr. Chairman.

23 CHAIRMAN KEESE: Commissioner Pernell.

24 COMMISSIONER PERNELL: Mr. Chairman, I  
25 would move that you be the Presiding Member and

1 Commissioner Moore be Second on the project.

2 CHAIRMAN KEESE: Motion by Commissioner  
3 Pernell, Keese Chairman and Moore Second on the  
4 Avenal Energy Project.

5 COMMISSIONER ROSENFELD: Second.

6 CHAIRMAN KEESE: And second by  
7 Commissioner Rosenfeld.

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Adopted five  
11 to nothing. Thank you, everyone. Wonderful.  
12 That makes ten.

13 Item 4, Inland Empire Energy Center.  
14 Commission consideration of the Executive  
15 Director's data adequacy recommendation for the  
16 Inland Empire Energy Center application for  
17 certification. Good morning.

18 MR. BARTRIDGE: Good morning,  
19 Commissioners. I'm Jim Bartridge, Staff Siting  
20 Project Manager, and Paul Kramer, Staff Counsel,  
21 is with me.

22 On August 17th Inland Empire filed an  
23 AFC seeking approval to construct and operate  
24 Inland Empire Energy Center on a 45-acre site in  
25 the community of Romoland. This site is located



1 in western Riverside County, approximately four  
2 and a half miles southeast of the City of Perris.

3 The project, as proposed, is a 670  
4 megawatt natural gas combined cycle power plant.

5 On September 25th the Commission found  
6 the AFC data inadequate for both the 6- and 12-  
7 month project for process. On November 30th the  
8 applicant withdrew their request for review under  
9 the 6-month process. And they have submitted  
10 supplemental information on December 6th, and  
11 staff has completed its review of this  
12 information.

13 And we now recommend that the Commission  
14 find the AFC data adequate for the 12-month  
15 process.

16 CHAIRMAN KEESE: Thank you. We have a  
17 recommendation on data adequacy.

18 COMMISSIONER PERNELL: Mr. Chairman, I  
19 would move the Executive Director's recommendation  
20 on this item.

21 CHAIRMAN KEESE: Motion, Commissioner  
22 Pernell.

23 COMMISSIONER ROSENFELD: Second.

24 CHAIRMAN KEESE: Second, Commissioner  
25 Rosenfeld. Any discussion here? Any public

1 comment?

2 All in favor?

3 (Ayes.)

4 CHAIRMAN KEESE: Opposed? Adopted five  
5 to nothing.

6 MS. TROWBRIDGE: Good morning,  
7 Commissioners. My name is Ann Trowbridge; I'm  
8 with Downy Brand, also. We want to thank you for  
9 the determination, and we also appreciate staff's  
10 efforts in helping us get to this point.

11 This morning I'd like to briefly  
12 introduce Greg Lamberg, who is a Director of  
13 Business Development with Calpine. And Mike  
14 Hatfield, who's in the front row, who will be the  
15 Project Manager with Calpine.

16 CHAIRMAN KEESE: Thank you. All right,  
17 that item is over and we're at number 5, Inland  
18 Empire Energy Center, possible approval of a  
19 Committee with the Inland Empire Energy Center.

20 COMMISSIONER ROSENFELD: Mr. Chairman, I  
21 would --

22 CHAIRMAN KEESE: Commissioner Rosenfeld.

23 COMMISSIONER ROSENFELD: -- I would like  
24 to move that Commissioner Pernell be Presiding  
25 Member, and that Commissioner Moore be Associate

1 Member.

2 COMMISSIONER LAURIE: Second.

3 CHAIRMAN KEESE: Motion by Commissioner  
4 Rosenfeld, second by Commissioner Laurie.

5 All in favor?

6 (Ayes.)

7 CHAIRMAN KEESE: Opposed? Adopted five  
8 to nothing. Thank you.

9 Items 6, 7, 8 and 9 are moved to the  
10 agenda on January 9th.

11 Item 10, Construction and Use of  
12 Emergency Generators Report. Commission  
13 consideration of the report to the Governor --

14 COMMISSIONER LAURIE: Mr. Chairman.

15 CHAIRMAN KEESE: Commissioner Laurie.

16 COMMISSIONER LAURIE: Thank you. This  
17 is known as the 25705 report; 25705 being that  
18 section of the Public Resources Code that permits  
19 the Governor or the Legislature to create or  
20 announce or enact an energy emergency based upon  
21 certain findings that have been done under that  
22 section.

23 That section further requires us, this  
24 agency, to write a report, quote, "detailing the  
25 full nature, extent and estimated duration of the

1 energy emergency situation, and making  
2 recommendations to the Governor and the  
3 Legislature for further energy conservation and  
4 energy supply measures to alleviate the emergency  
5 situation as alternatives to the use of such  
6 generating facilities."

7 I believe the report, as prepared,  
8 accomplishes the mandate provided to us. The  
9 report recommends regarding the duration that the  
10 energy emergency not be extended beyond the end of  
11 the year when the Governor's executive orders run  
12 out.

13 Judy Grau and others have been involved  
14 in the preparation of the report. If you would  
15 like an analysis Ms. Grau is available to do that.

16 This matter has been reviewed by the  
17 Siting Committee which supports the report, I  
18 believe. Commissioner Pernell, is that your  
19 understanding, as well?

20 COMMISSIONER PERNELL: That's correct.

21 COMMISSIONER LAURIE: Thank you.

22 CHAIRMAN KEESE: Ms. Grau, can you give  
23 us a real quick summary of what you found?

24 MS. GRAU: Sure, okay. One thing that  
25 was -- what we are recommending at this point is

1       that, as Commissioner Laurie said, we not extend  
2       the executive orders.

3               However, we still have concerns with  
4       some local area reliability, and that's outlined  
5       in the report. And there's obviously some market  
6       design issues that still need to be looked at.

7               So what we are saying at this point is  
8       we are recommending that we still continue with  
9       trying to accelerate the permitting and  
10      construction of power plants in our jurisdiction;  
11      and use the four-month siting process established  
12      by SB-28X. And just continue to provide updates  
13      to the Governor and Legislature on the status of  
14      power plant construction; and also continue with  
15      all the energy efficiency programs, as outlined in  
16      the report through those recommendations.

17              CHAIRMAN KEESE: Thank you.  
18      Commissioner Laurie.

19              COMMISSIONER LAURIE: Yeah, I have a  
20      question. Ms. Grau, you stated that you think the  
21      report recommends an acceleration of licensing  
22      activities.

23              MS. GRAU: I'm sorry, what I meant was  
24      the accelerate the -- for plants that we have  
25      already certified, the amendment process, that's

1       what I meant to say.

2               COMMISSIONER LAURIE:  The construction  
3       and the amendment process, not the --

4               MS. GRAU:  The amendment process.

5               COMMISSIONER LAURIE:  -- licensing  
6       process.

7               MS. GRAU:  As we have done for the  
8       Sunrise and Los Medanos projects, yes.

9               COMMISSIONER LAURIE:  Thank you.

10              CHAIRMAN KEESE:  Thank you.  Do we have  
11       a motion?

12              COMMISSIONER LAURIE:  I would move  
13       adoption of the report, Mr. Chairman.

14              COMMISSIONER PERNELL:  Second.

15              CHAIRMAN KEESE:  Motion, Commissioner  
16       Laurie; second, Commissioner Pernell.  Any public  
17       comment on this issue?

18              All in favor?

19              (Ayes.)

20              CHAIRMAN KEESE:  Opposed?  Adopted five  
21       to nothing.

22              COMMISSIONER LAURIE:  Good work, folks.  
23       Thank you, Judy.

24              CHAIRMAN KEESE:  Thank you.  Item 11,  
25       Tyco Adhesives.  Consideration and possible

1 adoption of a petition requesting the Commission  
2 initiate a rulemaking proceeding to consider  
3 adoption of revisions to the 2001 building energy  
4 efficiency standards requirements for cloth-  
5 backed, rubber, adhesive duct tape.

6 Good morning.

7 COMMISSIONER PERNELL: Mr. Chairman.

8 CHAIRMAN KEESE: Commissioner Pernell.

9 COMMISSIONER PERNELL: We have a number  
10 of folks that want to comment on this item. And  
11 we also have a staff report. If it's acceptable  
12 to the Chair, I'd like to hear from our witnesses  
13 for those that want to testify. And then have  
14 staff go through what the Committee's resolve is  
15 for the item.

16 CHAIRMAN KEESE: My feeling is that the  
17 appropriate way is for the petitioners to present  
18 their case before us. So, if you would like to do  
19 that, feel free.

20 MS. BUCK-WALSH: Thank you, Mr.  
21 Chairman, Commissioners. My name is Tracy Buck-  
22 Walsh and I'm one of the attorneys representing  
23 Tyco Adhesives in this matter.

24 On November 15th we wrote you a letter  
25 outlining the specific reasons why we believe that

1 the original regulation that we are requesting you  
2 either repeal or amend was flawed with regard to  
3 the Administrative Procedures Act, and opening it  
4 up to challenge.

5 Specifically, and I'll just confine  
6 myself to the notice flaws, we identified that the  
7 CEC had failed to notify Tyco Adhesives of the  
8 proceeding after Tyco had requested to be placed  
9 on the list receiving notice of proposed  
10 regulations. The CEC failed to notify Tyco as a  
11 party that would be interested in the proceeding,  
12 and the CEC failed to notify the Pressure  
13 Sensitive Tape Council, as a representative of  
14 small businesses likely to be affected by the  
15 proceeding.

16 Tyco represents 75 percent of the  
17 pressure sensitive tape market, and so obviously  
18 they're very concerned with the regulation that  
19 was enacted.

20 On November 26th we wrote another letter  
21 which is this petition that's before you today.  
22 And in that letter we requested repeal or  
23 amendment of the specific items, and I'll cite  
24 them so the record is clear.

25 It's California Administrative Code



1 Title 24, sections 124(b) (1) (d); 124(b) (2) (d);  
2 150(m) (2) (d); 150(m) (3) (d). I think I got them  
3 all, thank you.

4 We understand that one of the options  
5 before you today is to recommend an order  
6 instituting rulemaking to address these specific  
7 issues that are identified in these regulations.  
8 And while we appreciate the opportunity to have a  
9 full airing and testing with all the parties  
10 present of the issues presented, simply a notice  
11 ordering a new rulemaking will not cure the  
12 defects that were presented in the original  
13 rulemaking.

14 So we propose an alternative to you to  
15 avoid the irreparable harm that Tyco, as a 75  
16 percent market share of this pressure sensitive  
17 tape, as well as the other companies who also  
18 market this tape, will incur when the bulk of the  
19 regulation at issue goes into effect on December  
20 31st of this year.

21 And that is to repeal those portions of  
22 the regulations as we identified in our letter;  
23 and to allow for the new rulemaking to proceed  
24 with all the parties present. And to have the  
25 testing proceed, and then let the chips fall as

1       they may.

2               Alternatively we would request that the  
3       Commission extend the effective date of the  
4       exception to that regulation that was passed  
5       concerning the multiple orientation alternative of  
6       section 151(c) from December 31, '01, to the  
7       conclusion of a new rulemaking.

8               We believe that there is legislative  
9       support for proceeding in this manner. And the  
10      benefits of proceeding in this manner are twofold.  
11      First, it would avoid the irreparable harm to the  
12      companies that hold roughly 90 percent of the  
13      marketshare for the pressure sensitive tape who  
14      were not notified of the original proceeding.

15              And to allow them to participate while  
16      maintaining the status quo, to allow them to  
17      participate in the new rulemaking addressing this  
18      very discrete area, and to allow that to proceed  
19      with all the parties to its proper conclusion.

20              With me is Mr. Bill Funderburk, who  
21      also represents Tyco Adhesives. And I'll turn it  
22      over to Bill right now.

23              CHAIRMAN KEESE: Thank you.

24              MR. FUNDERBURK: William Funderburk of  
25      Stanzler, Funderburk and Castellon representing

1 Tyco Adhesives and Shurtape. I'll make my  
2 comments very brief because Tracy has summarized  
3 the petition very well, and we think that the  
4 record speaks for itself in terms of being due  
5 process that Tyco wasn't afforded.

6 I will tell you that pursuant to a  
7 request made by Assemblymember Sarah Reyes and  
8 Assemblymember Anthony Pescetti, a letter was sent  
9 over documenting this today. So you may not have  
10 it, and I have extra copies for you to look at.

11 CHAIRMAN KEESE: I have received it, and  
12 I circulated it.

13 MR. FUNDERBURK: Okay. That the staff  
14 of Tyco Adhesives has invested significant money  
15 and significant resources from the East Coast, out  
16 of state, over the past 30 to 45 days to work with  
17 the staff of CEC and the staff of LBNL. And  
18 despite the concerns that were expressed in the  
19 petition regarding what's happened in the past,  
20 Tyco was willing to wipe the slate clean and move  
21 forward in a productive manner pursuant to the  
22 directive of Commissioner Rosenfeld at the June  
23 14th hearing that we held.

24 And I think that the flood of emails  
25 that I have, probably three or four a day between

1       them, speaks to that, as well. So, we'd like to  
2       thank the staff for picking up the ball since it  
3       happened. And Tyco will continue to do that.

4               I think that the concerns that we have  
5       substantively have been expressed in the letter  
6       from Assemblymembers Reyes and Pescetti, and I  
7       think that those can probably just be addressed on  
8       their face by the Commission, either here or at a  
9       later time.

10              The last point that I wanted to make is  
11       I have a resolution from the Pressure Sensitive  
12       Tape Council. Neither my firm nor Ms. Walsh  
13       represent the Pressure Sensitive Tape Council, who  
14       have fax dated December 6, 2001, which I'll  
15       circulate. And that's basically a board  
16       resolution from the Pressure Sensitive Tape  
17       Council to support the efforts of Tyco in this,  
18       because the issue may arise that the Pressure  
19       Sensitive Tape Council is not present, and  
20       therefore there's no standing to raise the issue  
21       that the small businesses didn't get notice  
22       through the PSTC. And this resolution is an  
23       attempt to demonstrate their concern about this.

24              My understanding is that Glenn Anderson,  
25       the Executive Director who testified on June the

1 14th, 2001, will be sending a letter today in  
2 support of the Tyco petition.

3 Thank you.

4 CHAIRMAN KEESE: Thank you.

5 COMMISSIONER MOORE: I have a question,  
6 Mr. Chairman.

7 CHAIRMAN KEESE: Commissioner Moore.

8 COMMISSIONER MOORE: Let me ask this to  
9 Ms. Walsh, and that is, is your cure then for what  
10 you consider to be the wrong that has happened, to  
11 extend the exception -- exemption, sorry, to the  
12 end of the rulemaking? That's the total cure that  
13 you're seeking at this point?

14 And if so, what would happen during that  
15 period? What actions would be taking place during  
16 that extension?

17 MS. BUCK-WALSH: We've requested  
18 alternative relief. The perfect cure in our view  
19 would be to repeal the regulation, those portions  
20 that I recited. Allow for a due rulemaking to  
21 proceed. And with all the parties participating.  
22 And then for the Commission to act in accordance  
23 with the recommendations from a new proceeding.

24 The alternative, and you actually didn't  
25 misspeak, it is the exception to the rule which is

1 printed on the front page of the AB-970  
2 regulation, and it is stated in that form. There  
3 is an exception, and it has to do with really the  
4 bulk of the construction, or the bulk of the  
5 market that Tyco Adhesives is concerned with. And  
6 that is the multiple orientation alternative of  
7 section 151(c).

8 The way it is presented in the  
9 regulation it's unclear to us, because the  
10 exception is only printed on the front page, not  
11 in the text of the regulation, whether you have  
12 the authority to extend that deadline. We would  
13 argue that you do have the authority to extend  
14 that deadline. And so it would merely be an  
15 amendment to the regulation.

16 If you don't have the authority to amend  
17 the regulation then our request is to repeal those  
18 sections, maintain the status quo, no reparable  
19 harm is inflicted on 90 percent of the industry at  
20 issue, and we have a new rulemaking where all the  
21 procedural requirements can be accommodated.

22 So, it's an alternative request for  
23 relief.

24 COMMISSIONER MOORE: So, help me with  
25 this. Is there a different application of this

1 for commercial versus residential applications?

2 MR. FUNDERBURK: The commercial -- Ms.  
3 Walsh gave two, four different sections that we  
4 are requesting to either repeal or amend, and that  
5 was 124(b) (1) (d) and (b) (2) (d), and 150(m) (2) (d)  
6 and (m) (3) (d).

7 The 150 is for the commercial high rise,  
8 et cetera. And then the 124 is for the  
9 residential. So we are requesting both --

10 COMMISSIONER MOORE: And so do you have  
11 a preference for one side versus the other? Or  
12 are they of equal weight? Commercial or  
13 residential.

14 MR. FUNDERBURK: The preference is for  
15 the large scale housing developments which are  
16 covered under the exception.

17 COMMISSIONER MOORE: Thank you.

18 COMMISSIONER PERNELL: Mr. Chairman.

19 CHAIRMAN KEESE: Commissioner Pernell.

20 COMMISSIONER PERNELL: Mr. Chairman, let  
21 me try and set the record straight here a little  
22 bit because there are some things that were  
23 omitted.

24 First of all, the Legislature mandated  
25 that the Commission do, in 120 days do Title 24.

1       So that, in itself, is a lot different than the  
2       two years or three years that we normally take.  
3       So that was an expedited process.

4               And I do appreciate the work that staff  
5       did, and we got it done in, I think 119 days. So  
6       that was an expedited process.

7               Tyco came in after the process, although  
8       they're the largest duct tape manufacturers in the  
9       country I'm told; but for some reason they weren't  
10      watching California. Evidently they are now. But  
11      they came in and we, on June 14th, gave them an  
12      additional hearing to lay their case out. And  
13      they did that.

14              Then they went to the Legislature. We  
15      had a meeting at the Legislature. We came up with  
16      a procedure to test because they were saying that  
17      the procedure we did wasn't accurate. And so  
18      we've done that.

19              And now they are back before us with two  
20      or three other requests. So, in terms of the  
21      Commission and the Committee and how we've tried  
22      to accommodate Tyco, I think we've been fair, up-  
23      front, and now they are here with some other  
24      requests.

25              So, having said that, and just to put



1       that on the record, I'd like Mr. Ratliff to  
2       outline the procedure from here in terms of the  
3       Commission's response to Tyco.

4               MR. RATLIFF:  The Commission Staff --

5               CHAIRMAN KEESE:  -- staff's  
6       recommendations.

7               MR. RATLIFF:  Yes, you have the  
8       recommendation before you.

9               MS. BUCK-WALSH:  Mr. Chairman, I would  
10      request the opportunity to respond to Commissioner  
11      Pernell's comments if I could.

12              CHAIRMAN KEESE:  Sure, would --

13              MS. BUCK-WALSH:  Whatever order you'd  
14      like to go in is fine.

15              CHAIRMAN KEESE:  Right.  Well, we're  
16      going to hear from staff then.

17              MS. BUCK-WALSH:  Okay.

18              MR. RATLIFF:  You have before you a  
19      recommendation from the staff that this agency  
20      adopt an order instituting rulemaking, which would  
21      be limited to the duct tape requirements, duct  
22      sealing requirements, themselves.

23              And that is because I believe in the  
24      conversations that we have had with Tyco we  
25      believe that there are some issues that may merit

1 revisiting to see if, in fact, we did get it  
2 right.

3 But we believe that the law requires us  
4 to go through a rulemaking to change that  
5 regulation, or to change the effective date. We  
6 basically adopt regulations, and those regulations  
7 are submitted to the Building Standards Commission  
8 for approval and publication.

9 And the approval and publication of the  
10 Building Standards Commission goes directly to the  
11 effective date of the standards, themselves.

12 In this instance when this agency  
13 adopted these standards it placed in the adoption  
14 order a provision that excepted multiple  
15 orientation buildings from the requirement, which  
16 went into effect June 1st, by the way, it excepted  
17 them from the requirement until the first of the  
18 year.

19 And that very exception and the  
20 timelines of that exception were presented to the  
21 Building Standards Commission and approved by  
22 them, as well.

23 So, we believe that for us to change  
24 effective dates would likewise require us to go  
25 back to the Building Standards Commission in a

1 rulemaking to vary that date.

2 There's a certain rigidity in that which  
3 is perhaps unfortunate, but that's just the way it  
4 works with Building Standards.

5 So what we would propose to do, setting  
6 aside for a moment the questions about the  
7 procedure in the first adoption of these  
8 standards, what we would propose to do is initiate  
9 a rulemaking; hold a hearing; and try to determine  
10 whether or not there is some manner in which we  
11 would amend this regulation to improve it; or  
12 determine whether or not it's fine as it is.

13 And then adopt that regulation through  
14 the normal course of events. Take it back to the  
15 Building Standards Commission for approval.

16 The Building Standards Commission has a  
17 process which is extremely lengthy in terms of the  
18 publication requirements and the effective dates  
19 which normally implement the changes that adopting  
20 agencies make.

21 However, when they are making a change  
22 which they believe makes a regulation less  
23 stringent, they can put that change into effect  
24 within 30 days of their approval, which shortens  
25 considerably the implementation of any changes

1           that are made.

2                     I only offer that to make it clear what  
3           the timeline would be with the Building Standards  
4           Commission.

5                     CHAIRMAN KEESE: Assist me, however, in  
6           the study. Is anything that you've discussed  
7           dependent upon results of a study?

8                     MR. RATLIFF: Well, I'd have to have Mr.  
9           Pennington, Bill Pennington address that issue.  
10          He's been in discussions about the kinds of  
11          additional duct tape research that would be  
12          required for making any changes.

13                    CHAIRMAN KEESE: Okay.

14                    MR. PENNINGTON: At the June 14th  
15          workshop there were a number of other parties that  
16          expressed concern with what Tyco was asking for.  
17          And had issues with those suggested changes.

18                    And those parties need to be engaged in  
19          a rulemaking process so that their views can be  
20          heard, as well as Tyco's views.

21                    Also, Tyco has indicated that part of  
22          the regulation they really don't dispute. And so  
23          a repeal of the whole part of it would go beyond  
24          even what they see as an appropriate outcome.

25                    And then in addition to that, at the

1       June 14th meeting, Tyco made a very constructive  
2       proposal that they could bring into California a  
3       new clothback tape with a better quality adhesive  
4       that would be a far more effective product. And  
5       that they were willing to do that, and they were  
6       willing to start on that.

7                So, in their proposals to us they've  
8       said that they're seeking not a total elimination  
9       of this requirement, but some time to get that  
10      into play.

11               So, another issue to be considered in a  
12      rulemaking proceeding is perhaps a sunset on any  
13      kind of a modification we might make in the  
14      standard.

15               And from my view that's going to take a  
16      review publicly and some development of a strategy  
17      to develop, you know, not just and out-and-out  
18      repeal, but maybe some sort of accommodation might  
19      be reasonable. And, again, the other parties need  
20      to be heard on this.

21               That would be very focused. And I think  
22      the appropriate way to do that is through a  
23      rulemaking proceeding.

24               CHAIRMAN KEESE: Well, if I agree with  
25      you, I guess my question is we heard reference to

1 a study?

2 MR. PENNINGTON: There is a --

3 COMMISSIONER PERNELL: An additional  
4 test.

5 MR. PENNINGTON: There has been some  
6 work done --

7 CHAIRMAN KEESE: An additional --  
8 there's going to be some work done?

9 MR. PENNINGTON: Right.

10 CHAIRMAN KEESE: Is what you're talking  
11 about dependent on that from a time standpoint?

12 MR. PENNINGTON: I personally don't  
13 think so, --

14 CHAIRMAN KEESE: Or --

15 MR. PENNINGTON: -- but, --

16 CHAIRMAN KEESE: Or will that fit right  
17 in with -- is that expected to fit in with the  
18 time schedule -- I haven't heard exact dates here,  
19 but with the schedule you've just laid out in  
20 front of us, starting --

21 MR. PENNINGTON: There has been  
22 discussion about doing some further testing, that  
23 LBNL would do, that would take about 90 days and  
24 would begin after the holidays begin. And so that  
25 information would be in the latter part of March.

1                   CHAIRMAN KEESE:  And is that in the  
2                   timeframe that --

3                   MR. PENNINGTON:  It's possible that --

4                   CHAIRMAN KEESE:  -- Mr. Ratliff was  
5                   talking about in starting this proceeding?

6                   MR. RATLIFF:  Well, the timeframe for  
7                   the proceeding would probably have us putting out  
8                   the notice of proposed action in early January.  
9                   You have to have at least 45 days before the first  
10                  hearing, the adoption hearing.  Very possible that  
11                  we would be doing 15-day language.  So I would  
12                  guess you're talking about a minimum of two and a  
13                  half to three months for us to actually adopt --

14                  CHAIRMAN KEESE:  And then you're saying  
15                  that --

16                  MR. RATLIFF:  -- to the regulation.

17                  CHAIRMAN KEESE:  -- then it takes 30  
18                  days at Building Standards?

19                  MR. RATLIFF:  It takes -- you have to  
20                  file with the Building Standards Commission at  
21                  least, I think, 30 days prior to their business  
22                  meeting, although this is a very discrete  
23                  regulation that we're talking about.

24                  So, they might be able to have less  
25                  time.  But we can't be sure of that.

1                   CHAIRMAN KEESE:  Then does their 30 days  
2 follow our process, is that --

3                   MR. RATLIFF:  Yes.  They would approve  
4 the changes at their next regularly scheduled  
5 business meeting, given about four weeks, at least  
6 a minimum of four weeks advance --

7                   CHAIRMAN KEESE:  So if I put a timeframe  
8 on what you're suggesting it's three and a half to  
9 four and a half months that would be the best that  
10 could be done?

11                  MR. RATLIFF:  That's right.  That's  
12 right.

13                  CHAIRMAN KEESE:  Okay.

14                  MR. RATLIFF:  And then now their  
15 statement about regulations which they believe  
16 would, which might be characterized as making the  
17 regulation less stringent would be an additional  
18 30 days before the new regulation would become  
19 effective upon publication.

20                  CHAIRMAN KEESE:  Okay.  I'm sorry to  
21 interrupt you.  Have you completed staff's  
22 presentation, or do you have --

23                  MR. PENNINGTON:  Yes, I was just  
24 responding to your question.  The staff would  
25 recommend that we conduct a rulemaking proceeding



1 to address this.

2 And we're not aware of any legal remedy  
3 that is available to immediately suspend the  
4 regulations.

5 COMMISSIONER MOORE: Mr. Chairman.

6 CHAIRMAN KEESE: Commissioner Moore.

7 COMMISSIONER MOORE: I have a question  
8 for Mr. Ratliff. I didn't hear in your  
9 presentation a response to the idea of this  
10 extension that was just referenced by Mr.  
11 Pennington and the connection between your  
12 statement that doing so meant that you had to have  
13 a rulemaking.

14 You're saying that you don't think the  
15 regulations allow a simple extension or a  
16 suspension, as it were, of some of these changes  
17 until the rulemaking is done? That's not possible  
18 in your opinion?

19 MR. RATLIFF: That's correct. We would  
20 essentially, I mean the Administrative Procedure  
21 Act allows agencies to legislatively amend the  
22 regulations through a given process. And those  
23 procedures apply not only to the adoption of  
24 regulations, but likewise to the repeal of  
25 regulations.

1           If we were going to nullify this  
2       regulation we would have to go through the process  
3       to do it. If we were going to change the  
4       effective date of the regulation, which is already  
5       in effect, or in some way -- in effect, repeal it  
6       or appeal it for a given period of time, we would  
7       have to go through that process.

8           COMMISSIONER MOORE: Didn't you do that  
9       already with the extension from June to December?  
10      Didn't you, in effect, extend without opening a  
11      new rulemaking to deal with the extension?

12          MR. RATLIFF: No, because when we  
13      adopted that regulation we put into the adoption  
14      order our proposed effective date. We basically  
15      adopted it with a future effective date with  
16      regard to a category of buildings. And that was  
17      approved formally by the Building Standards  
18      Commission. And was, as I understand it, printed  
19      with the regulation.

20          So, the Building Standards Commission  
21      has essentially approved our effective dates, both  
22      for the standards in general, and for that  
23      particular category of buildings, as well.

24          COMMISSIONER MOORE: So just so I'm  
25      clear on what you see as the available options,

1        basically we're faced with either going ahead, as  
2        is; opening a new rulemaking and fixing whatever  
3        might be wrong, if it needs fixing, in the opinion  
4        of the Committee.

5                Or suspending everything that we did,  
6        and going back to ground zero.

7                MR. RATLIFF: Well, to go back to ground  
8        zero we would have to go through a rulemaking  
9        proceeding.

10               COMMISSIONER MOORE: So all roads lead  
11        to a new rulemaking in order to take some action  
12        different than the one that's already in process?

13               MR. RATLIFF: That's correct.

14               COMMISSIONER MOORE: Thank you.

15               COMMISSIONER LAURIE: Question, Mr.  
16        Chairman.

17               CHAIRMAN KEESE: Commissioner Laurie.

18               COMMISSIONER LAURIE: And I guess this  
19        question is posed to Mr. Ratliff, again regarding  
20        procedure.

21               The regulations are laws, rules,  
22        proposed by us, adopted into the state regulatory  
23        process. The implementation of those regulations  
24        is in the discretion of the appropriate agencies  
25        just so long as they act within the confines of

1       the law in implementing the regulation. Is that a  
2       fair statement?

3               MR. RATLIFF: Well, I don't know that it  
4       is, actually. I mean once you have adopted a  
5       regulation and it has been printed and is  
6       effective, it basically goes into the California  
7       Building Code, which is a code which the building  
8       officials are obligated to enforce.

9               And unless there is some formal change  
10      in the regulation that is, in fact, what they are  
11      supposed to be enforcing.

12              COMMISSIONER LAURIE: I understand that.  
13      But it's also my understanding, because I am sure  
14      that we have done this, Mr. Pennington and Mr.  
15      Matthews could correct me, but I believe that over  
16      the last couple years when there has been a  
17      requirement for clarification of certain  
18      standards, that we have acted not in contravention  
19      of the regulation, but we have let the world know  
20      that in administering the regulation that we were  
21      going to utilize our discretion in how we were  
22      going to go about doing that.

23              So, in recognition of a needed change, I  
24      think we recognize that we have some flexibility  
25      in how we're going to address those changes, and

1       that might even mean accumulating the issues that  
2       are being reconsidered, not legally delaying such,  
3       but from an inhouse policy perspective,  
4       administering those in such a manner where we  
5       really are truly acknowledging that there's an  
6       issue and there might be a change in such  
7       regulations.

8               Don't you think we have that kind of  
9       flexibility?

10              MR. RATLIFF: I'm not certain that I  
11       understand what kind of flexibility you're  
12       suggesting. If you're suggesting that we could  
13       recommend informally that the regulation not be  
14       enforced, or that its enforcement be delayed, I  
15       think it creates a very confusing situation for  
16       both the building officials and for other parties  
17       who may support the regulations well.

18              Again, you go through a formal process  
19       to change the regulations. The exceptions to that  
20       our ability to interpret those regulations is  
21       restricted to the formal interpretations that we  
22       do under 25402 when there is a dispute between a  
23       building official and a permit applicant. Or to  
24       the informal kinds of advice letters that we give,  
25       which are not legally binding for when particular

1 kinds of situations arise.

2 COMMISSIONER LAURIE: What troubles me,  
3 Dick, is I understand what you're telling me what  
4 the law says, and I don't disagree with that.

5 But reality is that not that we made a  
6 mistake, but that new information is available and  
7 we want to reconsider and there is a likelihood of  
8 a change. And so why not deal -- I may not be  
9 asking you for a legal response to this, I'm just  
10 expressing my concern -- why not deal with  
11 reality?

12 What is worse, putting the world on  
13 notice that well, there's an issue and a problem  
14 here, and it's going to take some time to deal  
15 with it?

16 Or have one rule, in effect, for a given  
17 period of time and tell everybody they have to  
18 comply with that rule? And that in all likelihood  
19 we're going to change it.

20 That, to me, suggests a bigger problem  
21 than if we let the world know that we fully expect  
22 and anticipate, or at least there's a likelihood  
23 of some modification here, so maybe you don't want  
24 to commit to the old rule, because we're likely to  
25 not have that rule in effect six months from now.

1                   So that's my concern. Which creates the  
2                   best symmetry? Which creates the more efficient  
3                   process? And I have to think about that one a  
4                   little bit.

5                   COMMISSIONER ROSENFELD: Could I make a  
6                   remark?

7                   CHAIRMAN KEESE: Yes. Commissioner  
8                   Rosenfeld.

9                   COMMISSIONER ROSENFELD: Let's see, I  
10                  want to get out of the procedural issues for just  
11                  a moment, and just make a couple of technical  
12                  remarks.

13                  I haven't followed the procedures a lot.  
14                  But this all starts out in a way which bothers me,  
15                  because I don't like the words irreparable harm as  
16                  used by Tyco without pointing out that there's  
17                  another side to the story.

18                  There's also been irreparable harm for  
19                  20 or 30 years to the citizens of California. The  
20                  numbers I know roughly are that ducts in  
21                  California leak like 30 percent. That's a  
22                  scandal; it results in utility bills which are at  
23                  least a billion dollars a year higher than they  
24                  ought to be.

25                  And the industry has had 20 years or so

1 to finally wake up to the fact that their duct  
2 tape falls off on the floor. I'm not sure I'm  
3 happy about delaying that.

4 So we came up with a solution which is  
5 to strap the tape until they come up with evidence  
6 that their new tape works. The new tape is not on  
7 the market yet.

8 And I think we did the best thing in  
9 good faith we could. I don't see any objections  
10 to putting some straps around tape for another few  
11 months. When a new and appropriate tape appears,  
12 bravo, we have solved this problem.

13 But, I'm really bothered by only one  
14 side of the irreparable harm story. That's all.

15 CHAIRMAN KEESE: Thank you.

16 MR. FUNDERBURK: Excuse me, is it  
17 possible that I could respond?

18 COMMISSIONER LAURIE: Excuse me, let me  
19 ask Commissioner Rosenfeld a question. Are you  
20 going to be in -- to make sure I understand your  
21 position, are you going to not support staff's  
22 recommendation?

23 COMMISSIONER ROSENFELD: No, I support  
24 the staff recommendation.

25 COMMISSIONER LAURIE: Okay.



1                   CHAIRMAN KEESE:  Let me --

2                   MR. PENNINGTON:  Probably a small  
3                   clarification should be made here.

4                   CHAIRMAN KEESE:  Yeah, I was going to  
5                   ask Mr. Pennington if you'd like to make a  
6                   clarification here.

7                   MR. PENNINGTON:  The requirement that we  
8                   adopted is to -- you can use this clothbacked  
9                   rubber adhesive product if you use it in  
10                  combination with Mastik.  And everyone in the  
11                  rulemaking proceeding, including the building  
12                  industry, utilities that are involved in duct  
13                  sealing programs, mechanical contractors that  
14                  participated, scientists that have looked at duct  
15                  tape, field researchers that have looked at duct  
16                  tape felt that that was a reasonable place to  
17                  land.  And was an acceptable place to land based  
18                  on the research findings that we have.

19                  So, it's not that this product is  
20                  prohibited from use.  This particular product can  
21                  be used with Mastik.

22                  There also are several other products  
23                  that this industry makes that are perfectly  
24                  satisfactory for compliance with the standards.  
25                  So there are several alternatives that the

1 industry has that they make, themselves, that, you  
2 know, is a profit center, itself, that they can  
3 supply in compliance with the standards.

4 CHAIRMAN KEESE: So your clarification  
5 is that the add-on is the Mastik, not the strap,  
6 is that what --

7 MR. PENNINGTON: Correct, that's the  
8 clarification.

9 COMMISSIONER ROSENFELD: So you do --

10 CHAIRMAN KEESE: Okay.

11 COMMISSIONER PERNELL: Well, I think  
12 clarification, if I could further clarify, that we  
13 haven't banned the use of duct tape. We're  
14 suggesting that you use it with another apparatus  
15 or another adhesive.

16 CHAIRMAN KEESE: Mastik.

17 COMMISSIONER PERNELL: Right.

18 CHAIRMAN KEESE: Okay. We're going to  
19 stop here for a second, and we're going to let the  
20 petitioner comment now. I think we've clarified  
21 somewhat, but would you like to try to clarify  
22 some more?

23 MS. BUCK-WALSH: I'm going to address  
24 the procedural aspects and Mr. Funderburk is  
25 going to address the technical aspects.

1                   COMMISSIONER PERNELL: I'm sorry, I  
2                   can't hear you.

3                   MS. BUCK-WALSH: Okay, I'm going to try  
4                   to respond to the procedural issues made, and  
5                   maybe raise some potential solutions, or at least  
6                   float some ideas that might be of interest to some  
7                   of the Commissioners.

8                   First, with regard to Commissioner  
9                   Pernell's comments, we're mindful of the  
10                  legislative mandate to address Title 24 in an  
11                  expedited manner. The Commission exercises  
12                  discretion to address it in part by addressing the  
13                  duct tape issue.

14                  But the fact that you were requested to  
15                  proceed in an expedited manner does not relieve  
16                  you of your obligation under the California  
17                  Administrative Procedures Act to provide notice to  
18                  parties who have requested notice.

19                  We requested notice. We did not get the  
20                  notice. The fact that you allowed for a workshop  
21                  after your proposed regulation had been made  
22                  public does not comply with the requirements of  
23                  the Administrative Procedures Act to allow Tyco to  
24                  participate from the beginning.

25                  It was more presented as a fait

1       accompli. And --

2               COMMISSIONER PERNELL: Okay, well, --

3               MS. BUCK-WALSH: So, that would be the  
4       basis of our -- and that was set forth in our  
5       letter of November 15th regarding the flaws in the  
6       Administrative Procedure Act that would subject  
7       this particular regulation to challenge in  
8       superior court.

9               With regard to --

10              COMMISSIONER PERNELL: Mr. Chairman, --

11              MS. BUCK-WALSH: -- the remedies that  
12       are available --

13              COMMISSIONER PERNELL: -- I have a quick  
14       question.

15              CHAIRMAN KEESE: Let's have Commissioner  
16       Pernell --

17              COMMISSIONER PERNELL: Just for my  
18       clarification you're saying that you requested  
19       notice before we began the process?

20              MS. BUCK-WALSH: Yes, that was set forth  
21       in our letter of November 15th specifically.

22              COMMISSIONER PERNELL: I understand your  
23       letter. I'm just trying to be clear on the fact  
24       that before we began the process you requested  
25       notice, Tyco?

1 MS. BUCK-WALSH: Tyco Adhesives, yes.

2 MR. FUNDERBURK: Commissioner, this is  
3 what happened. Dr. Jerry Serra, who appeared --  
4 and I'll repeat this for Chairman Keese and the  
5 other members who weren't here on June 14th, Dr.  
6 Jerry Serra participated in this process going  
7 back to 1998 and 1999 before AB-970 was even put  
8 on the table.

9 And the staff of CEC knew he was  
10 involved. They were involved in technical  
11 committees, professional meetings. Dr. Jerry  
12 Serra asked Scott Matthews for notice of anything  
13 that impacted the duct tape that he researched,  
14 himself. And he was not given it. That's the  
15 bottom line. That's the bottom line.

16 COMMISSIONER PERNELL: Okay.

17 MR. FUNDERBURK: And I'd like to add  
18 just one other thing. If this were a labor  
19 organization or a -- think about the import of not  
20 giving notice. A big company can get, you know,  
21 bandied about, it's a big company, but if it's a  
22 nonprofit group or labor organization, and they  
23 don't get notice. I think that you need to think  
24 about what the import of this decision is. Go  
25 ahead.

1                   MS. BUCK-WALSH: With regard to what  
2                   your options are, I'm not going to disagree with  
3                   Mr. Ratliff in terms of the timing of a repeal  
4                   proceeding. But, I might suggest another  
5                   approach, and I think it dovetails into the  
6                   suggestions that Commissioner Laurie was making.

7                   When you're faced with the reality that  
8                   you're going to reexamine a regulation that you  
9                   passed, and there will be significant industry  
10                  impact, and uncertainty in the industry and with  
11                  the enforcement community, as you send that  
12                  message that you're reexamining your rule.

13                  And that is to seek some sort of  
14                  injunction, I mean if we were to challenge the  
15                  regulation we would go to superior court and seek  
16                  a petition for writ of mandate to request that it  
17                  not be enforced.

18                  That would essentially get a judge, you  
19                  know, perhaps in the form of a stipulated  
20                  judgment, get a judge to say this is unenforceable  
21                  at the present time. You know, I'm sure we could  
22                  work up some sort of agreeable language. And that  
23                  would then send the message to the enforcement  
24                  community, which are the building inspectors and  
25                  the like, that while you've passed this reg, you

1 know, right now you're not going to enforce it.

2 And then we could, you know, stipulate  
3 in that judgment that there would be some sort of  
4 sunset that would run concurrent with the new  
5 rulemaking.

6 So, that is one other alternative action  
7 that you could take that would send the message  
8 that Commissioner Laurie suggests, and allow for  
9 the proceeding to progress with all parties, with  
10 all the new data and products. I'm the last  
11 person who should be talking about the technical  
12 aspects, but I can certainly speak to the  
13 administrative side and the litigation side. And  
14 that's just another proposal.

15 CHAIRMAN KEESE: Thank you. I would  
16 rephrase that that is an action you could take.

17 MS. BUCK-WALSH: Well, --

18 CHAIRMAN KEESE: Versus an action we  
19 could take.

20 MS. BUCK-WALSH: Well, no, actually --

21 CHAIRMAN KEESE: We have been advised by  
22 our counsel as to what we can do procedurally with  
23 the building codes.

24 MS. BUCK-WALSH: Yes, I understand, with  
25 the codes. This would be in conjunction with a

1 complaint for a petition for a writ of mandate, a  
2 declaratory --

3 CHAIRMAN KEESE: Yes, and that --

4 MS. BUCK-WALSH: -- relief complaint.

5 CHAIRMAN KEESE: Correct, and at that  
6 time I'm sure we'd deal with that.

7 I do want to ask Mr. Blees, we have  
8 heard the objections of Tyco for the process at  
9 the front end. I gather that general counsel has  
10 advised us that our regulations still stand, that  
11 they're not defective?

12 MR. BLEES: Mr. Ratliff has expressed  
13 the view of the chief counsel's office correctly.  
14 The Commission must, in order to change any aspect  
15 of an adopted and effective regulation, whether it  
16 be a building standard or other regulation, the  
17 Commission must act under the Administrative  
18 Procedure Act.

19 CHAIRMAN KEESE: Correct, that's step  
20 two. Step one is we feel that the adoption  
21 process was proper. You feel that the adoption  
22 process was proper.

23 MR. BLEES: I do not know all of the  
24 facts. However, I do know that the Administrative  
25 Procedure Act states that failure to mail notice



1 as required by the Act does not invalidate action  
2 taken by the agency.

3 CHAIRMAN KEESE: Is that --

4 MR. BLEES: Mr. Ratliff is much more  
5 familiar with the actual facts. He can address  
6 those. But I believe that if Ms. Buck-Walsh were  
7 to bring her petition for writ of mandate that it  
8 would fail.

9 COMMISSIONER LAURIE: And that's very  
10 much consistent with other elements of state law,  
11 where even evidence of failure to receive or  
12 failure to mail does generally not invalidate the  
13 proceeding. That does not mean that we would not  
14 consider appropriate legal response should an  
15 action be filed, in which we have discretion --

16 CHAIRMAN KEESE: Mr. Ratliff, do you  
17 have anything to --

18 MR. RATLIFF: Yes, there is a  
19 presumption of validity of a regulation that has  
20 been formally adopted and approved and published  
21 in the state codes. And not only is that a  
22 presumptive validity, but I believe in this case  
23 we gave sufficient notice.

24 We noticed very broadly to, I think,  
25 more than 4000 people on our list. I think we did

1       verify with the Tyco that they did not receive, in  
2       fact, that notice, nor did the Pressure Council.  
3       However, I would merely note that they did get  
4       constructive notice and did participate in the  
5       followup rulemaking that we performed last spring,  
6       and presented their objections to the Committee  
7       and the Commission at that time. So there was  
8       actual involvement prior to the adoption of the  
9       regulation, as well.

10               We believe that the regulation was  
11       correctly adopted and it's our view that it would  
12       withstand challenge. But it's really not our  
13       intent today to try to litigate that issue before  
14       you. There's a lot more that could be said about  
15       that, I think.

16               CHAIRMAN KEESE: Thank you.

17               COMMISSIONER LAURIE: Mr. Chairman.

18               CHAIRMAN KEESE: Commissioner Laurie.

19               COMMISSIONER LAURIE: If I may, I concur  
20       with Dick's comments. There are rather specific  
21       rules and a good history of the law regarding  
22       notice and lack of receipt thereof. But this is  
23       not the time and the place to debate that.

24               Should an action be filed, this  
25       Commission has discretion as to how to respond.

1 And I'm sure we'd think about it at the time. So,  
2 I would ask that we consider action absent and  
3 aside from any potential invalidity of the  
4 adoption of the initial regulation.

5 And I'd like to have us consider that at  
6 this time.

7 CHAIRMAN KEESE: Thank you. I do have  
8 one more card here. Mr. Danny Walsh was intending  
9 to testify?

10 MR. WALSH: Only if necessary, and I  
11 don't need to.

12 CHAIRMAN KEESE: Thank you. I believe  
13 we've heard from the parties on this issue enough.

14 MR. FUNDERBURK: Mr. Chairman, excuse  
15 me.

16 CHAIRMAN KEESE: Final word?

17 MR. FUNDERBURK: Yes, one final word.

18 And I have a great deal of respect for Dr.  
19 Rosenfeld and the work that he's done, but he did  
20 misspeak. The regulation requires, it's a belt-  
21 and-suspenders type of regulation. It's a  
22 drawband and a mastik.

23 And what Dr. Rosenfeld said is that all  
24 you need to do is put a drawband on it, on the  
25 duct tape and that would solve the problem.

1 Well, that's what we're proposing to do,  
2 and that's what we've proposed to do. And that's  
3 what we've been doing.

4 The second thing is there was reference  
5 made to all these contractors and members of the  
6 public about field tests. Well, there are a lot  
7 of small business people, Mr. Chairman, who were  
8 not able to make it to this hearing because they  
9 are strapped for work because the economy is going  
10 down the tubes, and they couldn't make it up this  
11 time.

12 But on June 14th they were here, and  
13 they were here. They were not afforded an  
14 opportunity to comment because they didn't hear  
15 about the regulation before it was adopted. And  
16 they showed up on June the 14th.

17 So, that's it.

18 CHAIRMAN KEESE: Thank you.

19 MS. BUCK-WALSH: And, Mr. Chairman, I  
20 also wanted to clarify that I didn't mean to infer  
21 that going to superior court was intended to be an  
22 adversarial proceeding, but rather a partnership  
23 in order to effectively enjoin the enforcement  
24 pending the outcome of the new rulemaking.

25 CHAIRMAN KEESE: Yeah, I didn't --

1       having heard what you said I didn't want you to  
2       think that we were going to go to court.

3               MS. BUCK-WALSH:   Okay, but there are  
4       ways to go together.

5               CHAIRMAN KEESE:   I haven't heard any  
6       indication here that we're going to go to court on  
7       this issue, so.

8               Do I have a motion?

9               COMMISSIONER PERNELL:   Mr. Chairman, I  
10       would move staff recommendation, which is to open  
11       a rulemaking on the rubber adhesive duct tape.

12              COMMISSIONER ROSENFELD:   Second.

13              COMMISSIONER MOORE:   Mr. Chairman.

14              CHAIRMAN KEESE:   Commissioner Moore.

15              COMMISSIONER MOORE:   I'm going to  
16       offer --

17              CHAIRMAN KEESE:   We have the motion and  
18       a second.

19              COMMISSIONER MOORE:   I understand you  
20       have a motion and second, and I'm going to ask  
21       that the maker of the motion entertain a  
22       modification, an amendment to that motion.

23              And that would be to suspend the  
24       exceptions that were called out, there are four of  
25       them that were called out during the pendency or

1       until the rulemaking is complete.

2               And my reasoning is this: That if, in  
3       the past cases where we have had a rulemaking up,  
4       or even where we've simply had a policy report  
5       that we wanted to consider, we've gone all the way  
6       through the renewables program and that's probably  
7       a good example of this -- gone all the way through  
8       and found out that someone had a complaint,  
9       whether we thought it was specifically legitimate  
10      or not, we tried to accommodate those complaints  
11      and actually reopen the hearing sometimes in order  
12      to take further testimony.

13             And in the case of something where  
14      there's a product that could come on the market or  
15      where we might have a better performance of the  
16      market during that period of time it just seems to  
17      me that we could get the benefit of that in a  
18      practical sense while still adhering to the strict  
19      legal interpretation of the rulemaking.

20             And it seems to me we can make an  
21      exception for further public input and do that  
22      under the existing rules. And I believe that we  
23      ought to extend ourselves to do that in this case.  
24      I think it's beneficial to the public overall to  
25      end up with that kind of a product entering the

1 market.

2 So, I offer that as an amendment to the  
3 maker's motion.

4 COMMISSIONER PERNELL: Mr. Chairman, and  
5 I do --

6 COMMISSIONER MOORE: Let me see if I get  
7 a second.

8 COMMISSIONER LAURIE: Second.

9 CHAIRMAN KEESE: Motion by Commissioner  
10 Moore, second by Commissioner Laurie.

11 COMMISSIONER PERNELL: Mr. Chairman, on  
12 the amendment to the motion, I think Commissioner  
13 Rosenfeld has accurately stated that we're only  
14 hearing one side. During those stakeholder  
15 meetings there were other interests that agrees  
16 with the Commission.

17 So, if we're going to extend, which is  
18 why we feel that a rulemaking and bringing all of  
19 those parties back in is a good approach to take.  
20 If we do some type of exception without notifying  
21 those other stakeholders who have spoken in favor  
22 of the Commission's decision, I think it's a  
23 little short-sighted.

24 And because of that I can't accept the  
25 amendment to the main motion.

1                   COMMISSIONER MOORE: Mr. Chairman, I'd  
2 call for the question on the amendment.

3                   CHAIRMAN KEESE: We have a motion and  
4 second to amend.

5                   COMMISSIONER ROSENFELD: Well, I have a  
6 question for Michal. I'm sorry, I'm so confused  
7 at this stage of the game I don't know what your  
8 four exceptions are.

9                   COMMISSIONER MOORE: And actually I  
10 can't call them out except that they're the  
11 exceptions in 151(c) and with that, I was writing  
12 them down, and probably illegibly, as Ms. Buck-  
13 Walsh was reading them off. Perhaps I can just  
14 lean on her to read those titles again. There are  
15 four of them.

16                   MS. BUCK-WALSH: They would be the  
17 exceptions concerning the multiple orientation  
18 alternatives of 151(c), which are -- Mr.  
19 Funderburk is going to read them into the record.

20                   COMMISSIONER MOORE: At least everyone  
21 was taking notes as badly as I did.

22                   MR. BOYD: Mr. Chairman, can the staff  
23 perhaps elaborate on this and put it into --

24                   CHAIRMAN KEESE: Mr. Ratliff --

25                   MR. BOYD: -- lay terms, please?



1 COMMISSIONER ROSENFELD: Thank you, sir.

2 CHAIRMAN KEESE: Mr. Ratliff.

3 MR. RATLIFF: I frankly have to confess  
4 I don't understand what the proposal is.

5 COMMISSIONER PERNELL: I have, Mr.  
6 Chairman, what I think are the four exceptions, or  
7 at least the request.

8 COMMISSIONER MOORE: Yes.

9 MR. RATLIFF: And how do these  
10 exceptions -- could I ask how --

11 CHAIRMAN KEESE: And the motion is to  
12 what?

13 COMMISSIONER MOORE: The motion --

14 MR. PENNINGTON: Could I clarify this?

15 COMMISSIONER ROSENFELD: Please.

16 MR. BOYD: Please.

17 COMMISSIONER ROSENFELD: For goodness  
18 sake.

19 MR. PENNINGTON: I think what's being  
20 referred to, I think there's some confusion  
21 between the sections that were mentioned at the  
22 outset that they were seeking repeal on, which  
23 were four sections that were named, and the  
24 exception to the effective date that is on the  
25 front of the standard.

1                   And I think it's actually the latter  
2           that Commissioner Moore is trying to propose as an  
3           amendment that that --

4                   COMMISSIONER MOORE:   That would  
5           effectively suspend --

6                   MR. PENNINGTON:   For just the duct tape  
7           thing.

8                   COMMISSIONER MOORE:   Correct.

9                   MR. PENNINGTON:   And I don't support  
10          that, I'm just trying to clarify.

11                  COMMISSIONER MOORE:   No, I understand  
12          that you don't support it, but I think Mr.  
13          Pennington did clarify it.   And, Bill, thank you  
14          for that.

15                  CHAIRMAN KEESE:   All right, before we  
16          call for the vote I'm going to ask counsel to tell  
17          us, have you suggested to us that we can't do  
18          this?

19                  MR. RATLIFF:   Well, if I understand --

20                  CHAIRMAN KEESE:   We can adopt it but  
21          that it wouldn't be effective?

22                  MR. RATLIFF:   If I understand the  
23          proposal we're proposing to suspend the effective  
24          date or postpone the effective date by this  
25          action, is that correct?

1 COMMISSIONER MOORE: It would, until  
2 the --

3 CHAIRMAN KEESE: Which would appear in  
4 print, but your legal advice to us was that this  
5 is something we can't do.

6 MR. RATLIFF: That's correct.

7 CHAIRMAN KEESE: Okay.

8 MR. BLEES: Cannot.

9 CHAIRMAN KEESE: Cannot, thank you.

10 MR. BLEES: Correct.

11 CHAIRMAN KEESE: Okay, so we have a  
12 motion to amend by Commissioner Moore, seconded by  
13 Commissioner Laurie.

14 All in favor of the amendment?

15 (Ayes.)

16 CHAIRMAN KEESE: Opposed?

17 (Nays.)

18 CHAIRMAN KEESE: The amendment is  
19 denied.

20 Now we're back on the main motion to  
21 adopt by Commissioner Pernell, seconded by  
22 Commissioner Rosenfeld. Any further conversation?

23 COMMISSIONER MOORE: Only, Mr. Chairman,  
24 to say that I can only assume that this motion  
25 will pass, and that if there were to be a lawsuit

1       filed that would seek to stay part of this, that  
2       it will be an opportunity for the Commission to  
3       look into it and see whether or not that's a  
4       method by which you would gain effective  
5       suspension or not, so the Commission will have to  
6       take that up at such time as it might come about.

7               CHAIRMAN KEESE: That would be my  
8       interpretation, also.

9               MR. BOYD: Mr. Chairman.

10              CHAIRMAN KEESE: Mr. Boyd.

11              MR. BOYD: In response to Commissioner  
12       Moore, and as a non voting member, but I do have  
13       some views.

14              I am, you know, as a 20 year regulator  
15       in another forum I am a little concerned about the  
16       procedural issues here. I have no sympathy for  
17       the scientific issue. I agree with Commissioner  
18       Rosenfeld, I think I testified at a previous  
19       hearing that from personal experience in two  
20       homes, and I've had a lot of homes in my lifetime,  
21       that the cloth backed duct tape sucks. It doesn't  
22       last at all. And through personal labors and  
23       financial expenditure I've gone back through, you  
24       know, and used the foil backed to make it last, et  
25       cetera, et cetera.

1                   But on the procedural issue here I am a  
2                   little concerned. But I'm convinced now that the  
3                   staff's recommendation to ask for an investigation  
4                   is the procedural way to perhaps redress the  
5                   situation within the legal bounds available to  
6                   this organization.

7                   I would hope that the aggrieved party,  
8                   the petitioners, would not see it necessary to  
9                   sue, and that they and the staff can aggressively  
10                  and rapidly work to address the issue. And if  
11                  they've got some miracle product that offers an  
12                  alternative, more power to them. And I guess that  
13                  can be proved in the process.

14                 But I hope we don't get dragged down  
15                 through either a legislative or a legal course of  
16                 action on this issue, which I see some sympathy  
17                 towards the procedural issue, but we're bound by  
18                 certain legal constraints. And hopefully can, in  
19                 good faith, resolve this issue expeditiously.

20                 COMMISSIONER MOORE: Mr. Chairman, just  
21                 in response to --

22                 CHAIRMAN KEESE: Thank you.

23                 Commissioner Moore.

24                 COMMISSIONER MOORE: -- Mr. Boyd's  
25                 point, all of us have suffered the same reaction,

1 I think, anyone who's worked on their own home.  
2 And certainly in putting the system in at my home,  
3 I've had occasion to use the name of some of the  
4 tape manufacturers in vain.

5 And as things unravel after that two-  
6 week period after which they were required to  
7 hold, I've probably reiterated that.

8 My interest here is not to try and  
9 override the good work of the Committee in their  
10 rulemaking, not at all. All I was trying to do  
11 was to make sure that some of the alternatives to  
12 the products that we've been discussing here got  
13 out to the market and became available in an  
14 earlier time.

15 I really don't believe that mastik is  
16 going to replace tape as the binding agent of  
17 choice. And so as a practical matter it just  
18 seems to me that anything we can do to speed up  
19 the penetration of this market by this new  
20 product, which apparently people like Tyco are  
21 spurred to provide, is to the benefit.

22 So, I'm going to support the motion  
23 that's out there, but I suggest that there may be  
24 other ways that are coming up to delay this, and  
25 we may want to take advantage of them in the

1 future, with the sole objective of getting a  
2 better product out of the market sooner, which it  
3 seems to me Tyco has demonstrated that they are  
4 capable of doing.

5 CHAIRMAN KEESE: Thank you. All in  
6 favor?

7 (Ayes.)

8 CHAIRMAN KEESE: Opposed? Adopted five  
9 to nothing.

10 MS. BUCK-WALSH: Thank you very much for  
11 your time and consideration. We appreciate it.

12 MR. FUNDERBURK: Thank you.

13 CHAIRMAN KEESE: Thank you.

14 COMMISSIONER PERNELL: Thank you.

15 COMMISSIONER LAURIE: Mr. Chairman.

16 CHAIRMAN KEESE: Yes.

17 COMMISSIONER LAURIE: Is there any way  
18 you would consider taking item 30?

19 CHAIRMAN KEESE: We're going to take  
20 them up in the following order, if you don't mind.  
21 We're going to take up item 30 first -- 31 first.  
22 We'll take up 30 second. And we'll take up 13  
23 third. Is that all right?

24 So we're going to move to item 31,  
25 Enforcement of Executive Director data requests.

1 Possible approval of one or more administrative  
2 subpoenas to enforce compliance by Pacific Gas and  
3 Electric Company, Southern California Edison  
4 Company, San Diego Gas and Electric Company,  
5 Sacramento Municipal Utility District and Los  
6 Angeles Department of Water and Power with various  
7 energy consumption data requests issued by the  
8 Executive Director on November 21, 2001, pursuant  
9 to Public Resources Code sections 25210, 25216.5  
10 and Government Code section 11180 et seq.

11 COMMISSIONER MOORE: Mr. Chairman, very  
12 brief preliminary remarks, if I may.

13 CHAIRMAN KEESE: Commissioner Moore.

14 COMMISSIONER MOORE: This comes to you  
15 frankly as a result of a tremendous amount of  
16 frustration on my part over the last what amounts  
17 to six years of trying to go through revisions to  
18 the data regulations wherein I've sent out  
19 multiple requests and was rebuffed at times  
20 properly because we didn't have what were probably  
21 the best confidentiality regulations in place.

22 And sometimes it seems to me unfairly.

23 And I would say that at this point in time it  
24 ought to be clear that we have a role as a public  
25 agency in trying to monitor and understand the



1 published data about the performance of the  
2 market.

3 We have gone to tremendous lengths to  
4 preserve the confidentiality of the data that is  
5 going to come to us. And in the process of doing  
6 that we've identified data storage and data  
7 access.

8 And I'm satisfied, more than satisfied  
9 that there has never been a breach of that; nor is  
10 there a line that will allow us to, in good  
11 conscience, say that we would have a breach in the  
12 future.

13 No data system, as the United States of  
14 America has proven, in some of the defense  
15 applications, for instance, is a hundred percent  
16 foolproof. But we're pretty close. And I don't  
17 see a risk that should cause us to say we can't  
18 accommodate reasonable storage of this data, or  
19 reasonable treatment of it in the future.

20 We are, I believe, the premiere agency  
21 to deal with data collection and information  
22 provision in the future, and to not go ahead with  
23 getting that data cooperatively, hopefully, in the  
24 future would absolutely hamstring our operations.

25 So, some of this comes to you in

1       frustration right now, and it reflects frankly a  
2       last step which I'm told is resulting in more  
3       cooperation than we might have had in the past.  
4       And hopefully will be something that we never ever  
5       have to use.

6               And I believe the staff is going to  
7       outline how we might wish to push this back, still  
8       keeping under the law our ability to use a  
9       subpoena in the future, but perhaps just reminding  
10      people that it is out there, and in fact, never  
11      ever having to invoke such a very large weapon.

12             Thank you.

13             CHAIRMAN KEESE: Thank you.

14             MR. DeLEON: Good morning,  
15      Commissioners. I'm Fernando DeLeon; I'm staff  
16      counsel at the Commission.

17             Staff is seeking Commission approval  
18      today for an order issuing administrative  
19      subpoenas to PG&E, Southern California Edison, San  
20      Diego Gas and Electric. Both SMUD and LADWP have  
21      complied with our data requests so far, so we will  
22      not be asking for subpoenas on those two entities.

23             Specifically the Commission is seeking  
24      data on dynamic load profile samples and rate  
25      group research data.

1                   By way of history, the Executive  
2           Director has requested a full set of data from  
3           these utilities on November 21st. In that data  
4           request the Commission assured the utilities that  
5           the data provided would qualify for the automatic  
6           confidentiality designations pursuant to our data  
7           collection regulations.

8                   Since the request was sent, staff has  
9           been working with the utilities to obtain the  
10          necessary data. And some of that data has been  
11          produced. Both SMUD and LADWP have fully complied  
12          with our data requests, but PG&E, SCE and San  
13          Diego Gas and Electric have not.

14                  The subpoenas specify that the data  
15          should be provided to the Commission no later than  
16          30 days from the date the order is adopted by the  
17          Commission.

18                  Mike Jaske is also here to answer any  
19          specific questions you may have about the specific  
20          nature of that data that is being requested.

21                  CHAIRMAN KEESE: Thank you. I'm sure we  
22          all appreciate the fact that LADWP and SMUD have  
23          furnished the information. As I understand it,  
24          the other utilities have offered varying forms of  
25          compliance.

1                   So, I think the best way to start would  
2           be to find out where the utilities are today in  
3           response to this request.

4                   And I don't want to pick favorites, I  
5           can take -- we can take them alphabetically as I  
6           have them here first. But if the industry has a  
7           spokesperson, you're welcome to do that.  
8           Otherwise, it's Mr. Alvarez.

9                   MR. ALVAREZ: Good morning,  
10          Commissioners. Manuel Alvarez, Southern  
11          California Edison.

12                  Let me briefly at least give you my  
13          characterization of where we're at on the initial  
14          request that was sent by the Executive Director to  
15          the utilities.

16                  I think we're pretty close in terms of  
17          attachment C has been agreed to; with respect to  
18          Edison attachment B has already been provided.  
19          And we've mailed out a progress in attachment A  
20          which deals with the dynamic load profile.

21                  We still do have a question on an issue  
22          that's before us as a regulated entity, and that's  
23          a directive basically from the PUC, when this  
24          issue was raised in '97 about providing dynamic  
25          load profile, and the ability of releasing that

1 information.

2 So we're kind of caught in a regulatory  
3 wedge there between one agency saying not to  
4 release it and another agency asking for it.

5 We have made progress, I feel  
6 comfortable, but we don't have agreement. We  
7 still have a bit of an impasse. So that --

8 CHAIRMAN KEESE: Let me see if I heard.  
9 Can I read into your words that Edison is willing  
10 to release it subject to the removal of the PUC  
11 blocking it?

12 MR. ALVAREZ: That's one of the issues.  
13 The other issue that has surfaced in our  
14 discussion was a way to --

15 CHAIRMAN KEESE: Well, is that where --

16 MR. ALVAREZ: -- mask that information,  
17 you know, if we were to release it --

18 CHAIRMAN KEESE: Do you need to get over  
19 the hurdle and then make a decision as to whether  
20 you're going to release it? Or would you release  
21 it if the PUC withdrew their objection?

22 MR. ALVAREZ: We'd have to cross that  
23 path at the PUC if the information was requested  
24 in terms of the individual information and data in  
25 terms of the sample points and the individuals

1       that are being identified.

2               Now, one of the issues that we made  
3       progress on is perhaps we'd be able to mask that  
4       information --

5               CHAIRMAN KEESE:   We don't -- as I  
6       understand --

7               MR. ALVAREZ:   -- but we haven't --

8               CHAIRMAN KEESE:   -- it we do not want to  
9       know the names --

10              MR. ALVAREZ:   Right, --

11              CHAIRMAN KEESE:   -- addresses, phone  
12       numbers --

13              MR. ALVAREZ:   -- but we've gotten to  
14       that point in the last couple of three days, and  
15       now it's just a matter of okay, what does that  
16       look like, what does that -- I think Commissioner  
17       Moore used a double-blind example, what does that  
18       test look like in terms of how we can mask that  
19       information.   I don't believe we've gotten there  
20       yet.

21              COMMISSIONER MOORE:   Yes, just for  
22       clarification.   I was using a technical term out  
23       of another industry, so probably the best term for  
24       the Commissioners to imagine is that it's possible  
25       to disguise the information before it comes out of

1 the utility so that any individual respondent  
2 cannot be identified, and that's what we were  
3 seeking.

4 While we still would maintain the  
5 characteristics, in other words you can still  
6 identify what the usage patterns were in a  
7 neighborhood for instance, we don't want to  
8 distort that. But we don't want to know, without  
9 permission, because we would still be able to come  
10 back to the utility and ask for permission to do  
11 specific targeted studies.

12 But absent that, we don't want to know  
13 who that respondent is; we don't want to know  
14 their individual identifiable demographic  
15 characteristics.

16 CHAIRMAN KEESE: Okay, so we're quite a  
17 ways there with Edison complying with the request?

18 MR. ALVAREZ: That's my assessment, but  
19 we still have yet to reach that final agreement.  
20 I'll let staff --

21 CHAIRMAN KEESE: Now, do you have a  
22 position as to whether -- what is in front of us  
23 is approval of administrative subpoenas. Do you  
24 have a request for us on that?

25 MR. ALVAREZ: We take no position on

1       that at this point. If the Commission wishes to  
2       pursue that course, giving that's fine with the  
3       Commission, you know, we do strive to find zones  
4       of mutual agreement. I think we've done that over  
5       the years.

6               If the subpoena is issued we'll take a  
7       look at it once it's filed with us in terms of its  
8       implications for the entire request, and what the  
9       consequences are there and the timeframe, et  
10      cetera.

11              There are a couple other issues that I  
12      want to raise to you in this activity, and that's  
13      the comment about SMUD and LA Water and Power in  
14      terms of them providing data.

15              It's my understanding that SMUD and LA  
16      Water and Power do not have dynamic profiles, so  
17      they're providing the Commission folks with  
18      different information than you're asking from the  
19      investor-owned utilities.

20              And if my understanding is correct  
21      they'll provide you the static load profiles of  
22      the sector which I believe we have provided to the  
23      Commission in the past.

24              So, there is an increment of additional  
25      information you're requesting, and part of that is



1 historic because of the development of direct  
2 access market in the investor-owned utilities, and  
3 nondevelopment of direct access market in the  
4 municipal utilities.

5 So there is a distinction in terms of  
6 the data being requested.

7 CHAIRMAN KEESE: Okay, thank you.

8 COMMISSIONER MOORE: Mr. Chairman.

9 CHAIRMAN KEESE: Is that -- can I --

10 COMMISSIONER MOORE: Just to follow up  
11 on your question. Mr. Alvarez, you're suggesting  
12 though that in order to proceed to the end we  
13 don't need to use the subpoena? In other words  
14 you're confident that we're going to get to the  
15 end of this?

16 MR. ALVAREZ: Well, that's a discussion  
17 that we've had with staff on the use of this data.  
18 And it's our understanding that you want to  
19 analyze part of the 2000/2001 implications of the  
20 20 program, and plus any conservation that took  
21 place during that period of time.

22 One of the difficulties we have is that  
23 providing even the individual data, you're not  
24 going to have an understanding of why that  
25 particular consumer/end user actually reduced

1       their energy without actually making a contact  
2       with that individual.

3               One of our concerns initially was the  
4       staff's contact of that particular customer; and  
5       one of the tentative agreements we reached with  
6       staff, there wouldn't be a contact with that.

7               So, you're kind of at an impasse in  
8       terms of what you think you're going to get the  
9       result of when you see the data from the  
10      individual customer. So, that's something you  
11      have to wrestle with.

12              Part of our proposal and part of our  
13      discussion was to offer a method by which we would  
14      work with the staff on a collaborative basis, sub  
15      segments of any particular sector. The  
16      residential, for example, would be subdivided.  
17      And if there's some interesting data or some  
18      interesting observation you want to pursue, that  
19      the staff would then meet with the utility and say  
20      we want to pursue this particular category a  
21      little further and let's dig a little deeper in  
22      terms of what the implications of that are.

23              But, as of yet we have -- that's part of  
24      the agreement we've offered, we have yet to reach  
25      that agreement.

1 COMMISSIONER PERNELL: Mr. Chairman.

2 CHAIRMAN KEESE: Okay.

3 COMMISSIONER PERNELL: Mr. Chairman, let  
4 me first commend Edison, and particularly Mr.  
5 Alvarez, for working with staff trying to come to  
6 some resolution here.

7 But my question is you stated that the  
8 PUC, under some order, disallows you from  
9 disseminating the information to the general  
10 public or to the CEC?

11 MR. ALVAREZ: The PUC provides that we  
12 not release that sampling data. The proceeding  
13 was a direct access proceeding in which the  
14 dynamic load profiles were generated to facilitate  
15 the settlement between the utility and the ESPs.  
16 And so those profiles were, in fact, requested by  
17 the ESP, and I believe the staff at the Commission  
18 and the Energy Commission supported that request,  
19 that that information be released.

20 During that proceeding the PUC decided  
21 not to have the utilities release that  
22 information. So that's kind of where we stand in  
23 terms of that impasse --

24 CHAIRMAN KEESE: Yeah, and it's not  
25 clear whether that was meant to apply to the

1 Energy Commission, or just the ESPs, in your view.

2 MR. ALVAREZ: Our view is that the PUC  
3 directed us not to release that information on the  
4 customer --

5 CHAIRMAN KEESE: Generally.

6 MR. ALVAREZ: -- generally, so we have  
7 taken that as an operation policy and have not  
8 released that data.

9 CHAIRMAN KEESE: Okay.

10 COMMISSIONER ROSENFELD: I have a  
11 question.

12 CHAIRMAN KEESE: I have a feeling our  
13 staff disagrees with that interpretation, but --

14 COMMISSIONER PERNELL: Right. Just a  
15 followup, my understanding is, and this will be a  
16 question to staff, my understanding was that the  
17 PUC would not require you to release the  
18 information, not that they required you not to  
19 release the information.

20 And I don't know whether -- so, I'm  
21 going to have to defer to staff on their  
22 understanding of that particular issue.

23 CHAIRMAN KEESE: I think it's more --

24 MR. ALVAREZ: Our operating is that we  
25 were --

1 CHAIRMAN KEESE: -- have you asked --

2 MR. ALVAREZ: -- not to release that --

3 CHAIRMAN KEESE: -- have you asked the

4 PUC --

5 MR. ALVAREZ: No, we have not asked the

6 PUC on this issue.

7 CHAIRMAN KEESE: Okay, you have not

8 asked the PUC on this issue. So, I think we have

9 further work to do here.

10 COMMISSIONER MOORE: Right, but we have,

11 we've talked to the PUC. So, even though there's

12 good reason why Mr. Alvarez has not asked the PUC

13 for that under their proceeding, but we have

14 talked to them, so we understand what they're

15 doing with that.

16 So, this is more of a -- there's more

17 tension here than is apparent in what he's saying.

18 CHAIRMAN KEESE: Okay, and are they --

19 do they stick with their position that they don't

20 want them to release the information?

21 Okay. Mr. Jaske is dying to say

22 something. Let's have Mr. Jaske say something.

23 (Laughter.)

24 DR. JASKE: Mike Jaske, Energy

25 Commission Staff. The PUC decision has been

1       bandied about, is decision 9710-031, was part of  
2       the whole apparatus of starting up the new market,  
3       part of which was allowing ESPs to go shop for  
4       customers.

5               One of the ways in which parties were  
6       exploring how that might be facilitated, and  
7       remember it was the policy of the state at that  
8       point, and the PUC, to support direct access. So  
9       how to support it was one of the issues in  
10      question.

11             There were proposals at that point in  
12      time that individual customer data be made  
13      available to ESPs so that they could use it for  
14      marketing purposes. As an element of that process  
15      and the final decision there was the issue of  
16      should utility load research data be made  
17      available to the public.

18             The PUC's decision was that load  
19      research data on individual customers not be  
20      released to the public.

21             Our understanding, reading then, now, my  
22      discussions with PUC Staff, the Energy Division,  
23      are that that decision has nothing whatsoever to  
24      do with the release of that data to a government  
25      agency under the sort of the framework that we

1       have proposed to get this data, under  
2       confidentiality.

3               We are not going to release it to the  
4       public. That's why Mr. Larson's letter of  
5       November 21st said that this qualified for  
6       automatic confidentiality. And as it is so  
7       designated we would not be able to release it to  
8       the public.

9               So, it isn't going to the public and  
10       there is no violation of the PUC's intent in  
11       adopting that decision. That's the first thing.

12              Second, the particular data in question  
13       is not different between the IOUs and the publicly  
14       owned utilities. Dynamic load profiles is a  
15       particular way in which load research data is  
16       processed and made available to the market in an  
17       expedited fashion.

18              It is the same load research data, by  
19       and large, that has been used for years for class  
20       load studies that the municipal utilities  
21       routinely process and use for their own purposes.

22              So, there is, in its essence, no  
23       difference between the data that has been asked  
24       for from the IOUs and the two municipal utilities.  
25       The two municipal utilities have agreed to provide

1 individual class load research data, hour by hour  
2 usage of individual customers, to us.

3 That is what is the problem with the  
4 three IOUs. They do not wish to do that, and they  
5 are citing confidentiality as at least the one  
6 public concern that they have.

7 And I will agree that Mr. Alvarez is  
8 correct in his recitation of our discussions. We  
9 have moved forward in some increments, but staff  
10 still desires to have the individual customer load  
11 research data. And the notion that Edison or all  
12 three of the utility load research staffs would  
13 sort of be at our beck and call to go do  
14 subsequent studies just does not seem to be a  
15 workable proposal to me.

16 Thank you.

17 CHAIRMAN KEESE: Thank you.

18 MR. BOYD: Mr. Chairman. Before Dr.  
19 Jaske sits down could I ask --

20 CHAIRMAN KEESE: Mr. Boyd.

21 MR. BOYD: -- a question? Your  
22 recitation was about somewhat ancient history,  
23 i.e., direct access. Direct access has been shut  
24 off.

25 I get from Commissioner Moore that for



1       whatever reason the PUC still feels that this data  
2       cannot be released to the CEC.  Is that a current  
3       request and a current denial, or am I missing  
4       something here?

5               MR. DeLEON:  I'll address that question.  
6       The order does not say the data should not be  
7       released to the CEC.  The order says the  
8       information, the data, should not be released to  
9       the public.

10              If you read the decision by the PUC it's  
11       very clear in that decision that they were  
12       concerned about confidentiality issues; that the  
13       public should not have access to this.

14              Those do not apply to us.  We have  
15       confidentiality regulations in place, and the data  
16       can be released to us.  There's no mention that it  
17       can't --

18              MR. BOYD:  So, has the PUC, of recent  
19       date, told the CEC that they have no problem with  
20       the CEC receiving that data as long as it's held  
21       confidential?  Is the beef with Edison at all, or  
22       is this -- do we have a problem with the PUC?

23              MR. DeLEON:  My understanding through  
24       conversation that Mr. Jaske had with the CPUC is  
25       that this is not a problem, but I'll let Mr. Jaske

1 answer that question.

2 DR. JASKE: To my knowledge the  
3 utilities have not approached the PUC about this  
4 issue. I believe Mr. Alvarez confirmed that just  
5 now for Edison.

6 I have had discussions with the PUC  
7 Energy Division Staff, who are the most closely  
8 connected to this data. Their understanding, as  
9 technical employees of the Commission, is that  
10 this decision does not affect the Energy  
11 Commission's ability to get this data from a  
12 utility.

13 We, the Energy Commission, have not  
14 asked the PUC for that kind of clarification. I'm  
15 not even sure it's appropriate that we ask for  
16 that clarification. We have our own authority to  
17 request data from anybody in these industries. It  
18 has been cited in Mr. Larson's letter and in the  
19 administrative subpoena.

20 We are offering the protection of  
21 confidentiality, which is appropriate for this  
22 kind of data. And as Commissioner Moore said at  
23 the outset, there's no reason to believe that our  
24 designation of confidentiality will be breached  
25 and this data will, in fact, be made available --

1                   MR. BOYD: I understand and appreciate  
2 all that, and take that at face value. So, my  
3 interpretation then is that the utilities in  
4 question are choosing to interpret the PUC  
5 regulation their own way. And the issue has not  
6 been tested apparently.

7                   DR. JASKE: I believe that's correct.

8                   CHAIRMAN KEESE: Thank you, Mr. Jaske.  
9 We're bumping up against the time clock here.  
10 Paula Ham-Su.

11                   MS. HAM-SU: Good morning. I'm Paula  
12 Ham-Su with Pacific Gas and Electric Company. I'm  
13 just here to say that we had a conversation with  
14 staff last week regarding the request for load  
15 data, the attachment A, and were disappointed that  
16 we could not reach agreement with them on other  
17 alternatives for the CEC to have access to the  
18 data that they need without requiring this large  
19 data delivery.

20                   We believe that we could work with the  
21 CEC collaboratively in deciding load studies that  
22 could be performed with PG&E resources.

23                   We pointed out to staff that there are  
24 some issues with load data that they are not that  
25 familiar with yet, and that's a lot of

1 intelligence that the utilities have that would  
2 take a very long time to transfer to CEC Staff, or  
3 to other parties so that the data can be used the  
4 way CEC Staff proposed that it be used.

5 So, we just wish that we could work with  
6 CEC Staff on deciding mutually beneficial analyses  
7 that could be performed with PG&E expertise and  
8 resources.

9 COMMISSIONER MOORE: Mr. Chairman. I'm  
10 not sure I understood what you said. Are you --  
11 staff has asked for data, raw data, not  
12 information. And what you seem to be suggesting  
13 is that you want to make sure that we interpret  
14 that data correctly, and therefore we need to use  
15 proprietary methods or some sort of statistical  
16 techniques that you've already developed inhouse  
17 in order to do that, is that correct?

18 MS. HAM-SU: They're not necessarily  
19 methods, they're just nuances to the data that we  
20 know about. I wouldn't say that there's anything  
21 proprietary about it. It's just intelligence that  
22 we have about the data that is difficult to  
23 transfer when that data gets --

24 COMMISSIONER MOORE: Well, and I guess  
25 on behalf of the staff I'm pretty appreciative

1       that you might want to take the extra time to make  
2       sure that we got those nuances.

3               On the other hand, anything that we  
4       might do with that data is an aggregate output of  
5       our own analysis, and as a consequence if we make  
6       an error in our interpretation of the data you're  
7       not hurt by that error because it is involved in  
8       our own forecasting.

9               In other words there's nothing that in a  
10      de-aggregate sense comes back to affect your  
11      company. So, I guess on the topical plane I'm  
12      appreciative, but I'd still like to get the data.  
13      And if you shipped over your experts to help us  
14      run the models, well, we've been having our own  
15      battle trying to get more folks on staff here --

16              (Laughter.)

17              COMMISSIONER MOORE: But probably nobody  
18      in this room is concerned with staff --

19              CHAIRMAN KEESE: So, let me --

20              COMMISSIONER MOORE: -- right now,  
21      anyway.

22              CHAIRMAN KEESE: -- let me summarize.  
23      You're not as close to working out a compromise  
24      with our staff as it sounds like Edison is?

25              MS. HAM-SU: Well, that would have to be

1 staff's perception, I don't know if they believe  
2 that we are closer or farther than Edison to  
3 reaching any agreement --

4 COMMISSIONER MOORE: Well, let me --

5 CHAIRMAN KEESE: Okay, --

6 COMMISSIONER MOORE: -- let me --

7 MS. HAM-SU: -- with them. I cannot  
8 comment on that.

9 COMMISSIONER MOORE: Mr. Chairman, let  
10 me just rephrase my question then. Suppose we  
11 said the nuances could come later. What we really  
12 want is the raw data, and if we stumble, then it's  
13 our fault, but you won't pay for it because in a  
14 sense you won't see it except in a very aggregate  
15 form.

16 So, if we said we accept the argument  
17 that we can probably do it in a better, more  
18 refined way in the future, would you supply the  
19 data in its raw form, absent -- sans nuance?

20 MS. HAM-SU: I think that we would for  
21 certain customer sectors. We would still have  
22 some issues for customer sectors where the data is  
23 more sensitive to the customer, you know. Where  
24 customers would be more likely to object to have  
25 the data released.

1                   Just let me -- let me --

2                   COMMISSIONER MOORE: Well, no, no, let's  
3 stay on that point for a second. Because what  
4 you're doing, and I think it's very important for  
5 the other Commissioners to hear this, what you're  
6 doing is you're going back to the argument about  
7 the confidentiality.

8                   And as Dr. Jaske said earlier, we, I  
9 believe, had come to an arrangement that would  
10 effectively mask any individual characteristics.  
11 And simply not allow them to be uncoverable by us,  
12 because they wouldn't transfer from you. In other  
13 words the customer identification would be masked  
14 at your end; before it ever left your confines,  
15 there'd be a mask over who that was.

16                  If that was the case, how could we  
17 penetrate confidentiality? Why would there still  
18 be an issue?

19                  MS. HAM-SU: I don't know how that  
20 masking would be conducted; but many of these  
21 customers are their own zip code, and they are the  
22 only customer with that SIC code, and in, you  
23 know, our service territory. It would be very  
24 difficult for -- it would be very difficult for  
25 somebody not to figure out, you know, who they

1       are.

2               COMMISSIONER MOORE: Well, all right.  
3       This is still important. Important to me because  
4       I spent two years trying to go through the  
5       question of what the rule was about multiple  
6       entities in a zip code, aggregation. And unless  
7       I'm wrong, and we had a number of statistical  
8       experts testify on this, we finally adopted a rule  
9       that is virtually impossible to penetrate for  
10      actual disaggregation and finding someone's  
11      identity.

12             And I'm wondering if maybe it's just  
13      been so much time that passed that the existence  
14      of that rule is not extant.

15             MS. HAM-SU: I apologize for my  
16      ignorance here. Are we still talking about the  
17      360 rule? Or is this a different rule?

18             COMMISSIONER MOORE: Go ahead, Mr.  
19      Jaske.

20             DR. JASKE: The disclosure portion of  
21      the Commission's confidentiality regulations says  
22      that in addition to whatever formula is to be  
23      followed, that additional steps should be taken to  
24      assure that individual customer identity cannot be  
25      discerned.



1           So, if there was one, you know, three  
2   refineries and PG&E, you know, it may be such that  
3   we can only say, here's refinery activity in all  
4   of PG&E's service area, because to say anything  
5   about further geographic identification would  
6   allow the individual ones to be teased out.

7           So, there's a general principle that is  
8   to be followed in disclosure of anything that is  
9   designated confidential, is you take whatever  
10  steps it takes to preserve the confidentiality.

11           COMMISSIONER MOORE: Well, I just --

12           CHAIRMAN KEESE: Commissioner Moore, can  
13  I observe --

14           COMMISSIONER MOORE: Yeah.

15           CHAIRMAN KEESE: -- this is a great  
16  general discussion, but I haven't heard --

17           COMMISSIONER MOORE: Well, no, it's --

18           CHAIRMAN KEESE: -- anything from Ms.  
19  Ham-Su that I think has changed your mind about  
20  what we should do here.

21           COMMISSIONER MOORE: Well, no, I'm  
22  trying to isolate what their complaint is. And I  
23  believe that I've done that. And that isolation  
24  would suggest that they are willing to send us  
25  data, but only data where they determine that they

1 don't have a confidentiality problem.

2 And if that's the understanding then I  
3 guess I'll take their point. Am I understanding  
4 correctly?

5 MS. HAM-SU: Well, in the past we had  
6 participation in the information proceeding that  
7 you led, we had participation from some customer  
8 groups that also voiced their concerns about  
9 having the data for the customers they represented  
10 divulged.

11 So, I don't think that that would be  
12 just our determination. We are not, you know, the  
13 only ones --

14 COMMISSIONER MOORE: I do understand.  
15 Thank you.

16 CHAIRMAN KEESE: Thank you.

17 MS. HAM-SU: May I say something else?  
18 When we talked with staff and staff told us about  
19 the study that they were planning on conducting  
20 with this data, we pointed out to them that some  
21 of the things they were trying to do were just,  
22 were not going to be done with that data. That  
23 data was just not what they needed for that type  
24 of study.

25 So, we could continue talking with them

1       about all our avenues of, you know, providing the  
2       CEC with the data they need without delivering the  
3       load data, the individual load data, to the  
4       Commission might be helpful.

5               CHAIRMAN KEESE:  Okay, well, I hope that  
6       works out that some accommodation can be reached.

7               Mr. Richards, or I'm sorry, Roberts, Ted  
8       Roberts.

9               MR. ROBERTS:  Thank you, Mr. Chairman  
10       and Commissioners.  My name is Ted Roberts and I'm  
11       Regulatory Attorney with San Diego Gas and  
12       Electric here to address San Diego Gas and  
13       Electric and hopefully to fill in maybe a few of  
14       the gaps and respond directly to some of the  
15       questions and some of the issues that you've  
16       raised already, without taking up too much time.

17              First I'd like to say that the basis of  
18       the confidentiality concerns is a recognized  
19       privacy right by the State of California of  
20       utility customers in their customer-specific data  
21       and the release of that data.

22              And through supreme court decisions and  
23       various interpretations by courts of appeal, or  
24       especially by the Commission, we've sort of  
25       evolved with this perhaps patchwork scheme of

1 governing the release of confidential information,  
2 but it is a serious issue to the State of  
3 California, and that's why we take it so  
4 seriously. It's not just something we hide  
5 behind.

6 I would also point out that LADWP and  
7 SMUD are not regulated by the California Public  
8 Utilities Commission, and therefore don't have the  
9 same concerns that we do about a customer or  
10 anyone being able to bring an action against us at  
11 the PUC for unlawful release of the information.

12 I also have to say that I disagree  
13 somewhat with Mr. DeLeon about the PUC decision,  
14 which I also brought with me today. The relevant  
15 discussion is at pages 15 to 20 of that decision.  
16 And I'd like to read just the last paragraph  
17 dealing with this issue of the survey data in the  
18 DSM surveys.

19 "We do not believe that the load  
20 research sample data should be made  
21 available at this time. The load  
22 research data forms the basis for  
23 allocating costs and designing rates.  
24 The UDCs also contend that this data  
25 will be used for load profiling in the

1 future. We have balanced the need for  
2 this information with the need to keep  
3 this information sheltered so that the  
4 sampling remains reliable. This is  
5 especially important because of our  
6 upcoming reliance on load profiles.  
7 Therefore, we decline to order the UDCs  
8 to make their load research sample data  
9 available."

10 This is really the larger concern.

11 There are confidentiality concerns which can  
12 hopefully be worked around. But one of the main  
13 concerns that SDG&E has raised with staff is the  
14 nature and the sensitivity of this data to us in  
15 use of designing and allocating rates.

16 And further, that because of the nature  
17 of the sample, itself, and the econometrics that  
18 are built into our model, that the data that's  
19 been requested is really of no value for any other  
20 purpose other than designing our aggregate load  
21 profiles, and designing rates.

22 And we've offered to share that at the  
23 aggregate level. But that's then sort of come to  
24 a standstill in negotiations.

25 We are in a similar position with Edison

1       in regard to our willingness to release attachment  
2       B and attachment C, even though there are  
3       confidentiality concerns. We feel that we've at  
4       least minimized the risk to ourselves there.

5               The final issue I would bring up goes to  
6       the issue of the subpoena, itself, which hasn't  
7       been addressed fully. And just to be frank, we  
8       feel that use of the subpoena power outside of the  
9       context of an investigation or some kind of formal  
10      proceeding at the Commission, and in particular a  
11      proceeding that has to do with perhaps some  
12      criminal activity or some wrongdoing is an abuse  
13      of the subpoena power.

14             And we would have serious legal  
15      questions about the appropriateness of using the  
16      subpoena power just to routinely gather  
17      information if staff is not satisfied or is  
18      unwilling to continue to work with the utilities  
19      to get information that's responsive to what  
20      they're trying to do, but still protects and  
21      balances appropriately the interests of the  
22      utility in retaining that information.

23             We are certainly willing to continue to  
24      work with staff toward developing that. We think  
25      that the issuance of a subpoena just really goes

1       beyond the scope of what's necessary here to  
2       achieve a result for everybody.

3               COMMISSIONER MOORE:  The question.

4               CHAIRMAN KEESE:  I would observe that we  
5       have not routinely issued subpoenas here.  If you  
6       can think of when we've done it before, that would  
7       be helpful.  But, --

8               MR. ROBERTS:  I mean just --

9               CHAIRMAN KEESE:  -- but --

10              MR. ROBERTS:  -- in this context it  
11       would just seem that staff is, you know, --

12              CHAIRMAN KEESE:  I gather --

13              MR. ROBERTS:  -- in the routine course  
14       of business, rather than in some --

15              CHAIRMAN KEESE:  Right.  In other words  
16       instead of issuing a subpoena we should, if we  
17       can't get the information we should file a court  
18       action or do something else.

19              MR. ROBERTS:  Even then, according to  
20       the law, it would require a court order rather  
21       than administrative subpoena duces tecum to compel  
22       us to release the information.  I mean that's how  
23       seriously the courts and the PUC have treated that  
24       privacy interest.

25              CHAIRMAN KEESE:  Commissioner Laurie.

1                   COMMISSIONER LAURIE: Question, Mr.  
2           Chairman. Yeah, I think it's a valid question.  
3           Subpoenas are issued pursuant to some kind of  
4           legal action, whether it's administrative or not.  
5           And there is no legal action pending.

6                   So, let me simply ask our counsel, under  
7           these circumstances, is it counsel's opinion that  
8           we have the authority to issue subpoenas?

9                   MR. DeLEON: Yes, Your -- yes, --  
10                  (Laughter.)

11                  MR. DeLEON: Yes, Commissioner Laurie.  
12           We also have the ability to go right into superior  
13           court with an order to show cause. That was one  
14           of our recommendations initially, that we could  
15           request subpoenas and have them issued, or go  
16           directly to the superior court and have the  
17           utilities demonstrate why they are not complying  
18           with our regulations and statutes.

19                  COMMISSIONER LAURIE: Okay, but does one  
20           precede the other? Do you need to file --

21                  MR. DeLEON: Not necessarily.

22                  COMMISSIONER LAURIE: -- an action  
23           before we have the authority to issue a subpoena?

24                  MR. DeLEON: No, we can issue subpoenas  
25           without that.



1 COMMISSIONER LAURIE: Thank you.

2 CHAIRMAN KEESE: Thank you. We have an  
3 issue before us.

4 COMMISSIONER MOORE: So is there anybody  
5 else that wants to speak, Mr. Chairman?

6 CHAIRMAN KEESE: Any other member of the  
7 public? I've gotten all the cards that have asked  
8 to speak on the issue.

9 COMMISSIONER MOORE: Thank you, Mr.  
10 Chairman. With regard to the issue, I'll try and  
11 stay on the high side of this, but I will simply  
12 indicate that at least one of the companies that  
13 is represented here today gave me personal  
14 assurance over two years ago that they were going  
15 to comply; that I had satisfied all of their  
16 concerns about the confidentiality; and that data  
17 would flow.

18 In fact, I was promised that data would  
19 flow to the staff immediately after that. And, to  
20 stand up here and formally renege on that is  
21 egregious, at best. And if that testimony today  
22 was designed to get me to bend, if I was likely to  
23 lighten up today, that sent me exactly the other  
24 direction.

25 So, if I had any sympathy for not

1       applying a subpoena in the future, then it just  
2       evaporated.

3               Mr. Chairman, I believe that we are in a  
4       position to ask for and to utilize this  
5       information under the statutes that we have. I  
6       think that we are making progress, and I believe  
7       that people will see the resolve of the Commission  
8       to take this. And I absolutely categorically  
9       reject the idea that we have created a set of  
10      protections that are less than what's called for  
11      in the law, or less than what is ethically called  
12      for us to utilize.

13              So, with that in mind, I would move to  
14      authorize the Administrative Officer to begin the  
15      proceedings to use the subpoena power that we  
16      have. But I would not institute it as of today.  
17      In fact, I would ask that we revisit this on  
18      January 9th, and check progress with the staff. I  
19      believe that we are making progress and I think  
20      that -- I think in all three cases we're close  
21      enough that we're going to get the kind of product  
22      that we will be able to use, and that we'll get  
23      cooperation from the PUC.

24              But it seems to me this is a power that  
25      we are accorded. I talked about it two years ago

1 in one of the public hearings, and indicated that  
2 we should not be afraid to use it in the public  
3 interests. And I think that it's a tool that  
4 clearly the law anticipates and the statutes  
5 anticipate us using.

6 So, I would move to authorize the  
7 Executive Officer to prepare those subpoenas, and  
8 then ask that the Commission consider those again  
9 at the January 9th regular meeting.

10 CHAIRMAN KEESE: We have a motion.

11 COMMISSIONER ROSENFELD: Second.

12 CHAIRMAN KEESE: Second by Commissioner  
13 Rosenfeld.

14 COMMISSIONER LAURIE: Mr. Chairman, --

15 CHAIRMAN KEESE: Commissioner Laurie.

16 COMMISSIONER LAURIE: -- would the maker  
17 of the motion consider amending the motion to  
18 authorize issuance of the subpoenas upon  
19 determination of the Electricity Committee? So it  
20 doesn't have to come back to the Commission.

21 COMMISSIONER MOORE: If my colleagues --  
22 I would be happy to amend the motion to that  
23 extent, and save this coming back to the  
24 Commission. And indicate that we would act on or  
25 after January 9th in the Electricity Committee if

1 the second would agree to that.

2 COMMISSIONER ROSENFELD: Agreed.

3 COMMISSIONER MOORE: Mr. Chairman, you  
4 have an amended motion before you.

5 CHAIRMAN KEESE: I took a moment out.  
6 Our amended motion is to --

7 COMMISSIONER MOORE: Amended motion is  
8 to allow the --

9 CHAIRMAN KEESE: -- the Electricity  
10 Committee --

11 COMMISSIONER MOORE: -- Electricity  
12 Committee to act on behalf of the Commission on or  
13 after January 9th.

14 CHAIRMAN KEESE: Is counsel satisfied  
15 with that motion?

16 MR. DeLEON: Yes. I would mention that  
17 the subpoenas, as drafted, have the signatures of  
18 all five Commissioners. So, certainly the  
19 Committee could act upon them, but I would request  
20 that all five Commissioners sign the subpoenas.

21 CHAIRMAN KEESE: Thank you.

22 COMMISSIONER PERNELL: That's a--

23 CHAIRMAN KEESE: Any --

24 COMMISSIONER PERNELL: Mr. Chairman, on  
25 the motion that's an interesting request, but

1       certainly if all five Commissioners vote in the  
2       affirmative; but if some or one or four don't,  
3       then I don't know that they can sign such a  
4       request.

5               COMMISSIONER LAURIE:  What we're doing  
6       is we're delegating -- we have the ability to  
7       delegate the authority to the Committee, and I --

8               COMMISSIONER PERNELL:  And I have no  
9       problem with that.

10              CHAIRMAN KEESE:  We'll deal with the  
11       form after --

12              COMMISSIONER PERNELL:  I have a point of  
13       clarification, Mr. Chairman, if I may?

14              CHAIRMAN KEESE:  Commissioner Pernell.

15              COMMISSIONER PERNELL:  I know we're  
16       trying to get out of here for --

17              CHAIRMAN KEESE:  You're trying to get  
18       out of here.

19              COMMISSIONER PERNELL:  Mr. Chairman, and  
20       I have no problem with the motion or the amendment  
21       to the motion, but I think we should keep in mind  
22       that at some point we're going to need the type of  
23       data that staff is requesting.  And if this goes  
24       to the Electricity Committee does that then -- and  
25       there's no compromise from the utilities and

1 staff, I just want to be sure that the Electricity  
2 Committee will do the right thing. And I'm fairly  
3 confident that they will. But we don't need to  
4 see this again two years from now.

5 So I'd just urge that the Committee make  
6 the proper decision if it gets to them. And I'm  
7 hopeful that it won't. I am very hopeful that it  
8 won't. So that's my comments on the motion.

9 CHAIRMAN KEESE: Okay, we have a motion  
10 and second. All in favor?

11 (Ayes.)

12 CHAIRMAN KEESE: Opposed? Adopted five  
13 to nothing. Thank you.

14 Mr. Larson, there was a signal for you  
15 in the back.

16 We'll take up item 30 next, --

17 COMMISSIONER LAURIE: Mr. Chairman, --

18 CHAIRMAN KEESE: -- siting regulations.  
19 Possible adoption of procedural clarification to  
20 the power plant siting regulations.

21 Commissioner Laurie.

22 COMMISSIONER LAURIE: Thank you. What  
23 you have before you is the conclusion of an effort  
24 that started literally years ago. In a more  
25 formal sense started in February of this year when

1 I submitted a memorandum to the Commission seeking  
2 Commission consensus to proceed with this process.

3 There have been numerous public  
4 hearings. This Commission acted in October to  
5 develop a draft set, or at least offer comment as  
6 to proposed language that was then filed with the  
7 State Office of Administrative Law.

8 And what you have is the action before  
9 you to actually adopt those regulations.

10 I don't know the extent to which you  
11 want to have detailed discussion. All of these  
12 matters have been before you numerous times.

13 I would, however, request that we  
14 bifurcate the discussion into two segments. One,  
15 the regulations as a whole; but, deleting  
16 therefrom the discussion on section 1710 because  
17 there are numerous individuals in the audience  
18 that wish to address that particular section, but  
19 perhaps not others.

20 So, I would suggest that we move forward  
21 in a discussion on all the regulations,  
22 segregating out 1710; then have the discussion on  
23 1710 taken up secondly.

24 CHAIRMAN KEESE: Thank you,  
25 Commissioner. We have Mr. Seedall, Mark Seedall,

1 and Jeff Harris, who have asked to speak on this  
2 issue.

3 COMMISSIONER LAURIE: And I'm concerned  
4 that they may only want to address 1710.

5 CHAIRMAN KEESE: Is that correct for  
6 both? Well, why don't you make a motion then on  
7 the other sections.

8 COMMISSIONER LAURIE: Mr. Chairman, I  
9 would move to adopt the regulations as presented,  
10 reviewed by the Siting Committee, previously  
11 discussed by this Commission, except for the  
12 recommendations to modify section 1710.

13 COMMISSIONER MOORE: Second.

14 CHAIRMAN KEESE: Motion, Commissioner  
15 Laurie; second, Commissioner Moore. Any comment  
16 up here? Any public discussion?

17 All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed? Adopted five  
20 to nothing.

21 COMMISSIONER LAURIE: Mr. Chairman, as  
22 to section 1710, that's an issue again that has  
23 been discussed for years in front of the  
24 Commission; most formally in our report to the  
25 Legislature, in which we cited the rule of section



1       1710. And notified the Legislature that we would  
2       move to liberalize, to ease the communication  
3       capability between the parties.

4               What I had earliest proposed in section  
5       1710 is that all parties be allowed to communicate  
6       with one another without the formality of a  
7       required notice.

8               That did not receive majority support,  
9       so my last recommendation was to modify the  
10      section simply to clarify, because there was an  
11      internal conflict in section 1710.

12              1710(h) read: Nothing in this section  
13              shall prohibit an applicant from  
14              informally exchanging information or  
15              discussing procedural issues with the  
16              staff without a publicly noticed  
17              workshop.

18              I had a concern about that because I  
19      didn't know what informally meant. And I also  
20      noted that only the applicant was allowed to do  
21      that, and that was inappropriate.

22              So the original proposed language you  
23      see under 1710(a) would have permitted  
24      communications between all parties, including  
25      staff, for the purpose of exchanging information

1 and discussing procedural issues.

2 The debate most importantly then went to  
3 the third sentence which said: Discussion between  
4 staff and any other party to modify the staff's  
5 position or recommendations regarding substantive  
6 issues shall be noticed.

7 And so that is a modification of the  
8 earlier language that did not restrict  
9 communications to nonsubstantive issues. So, what  
10 we have, in effect, done is rather than make the  
11 process, make communication easier, we have  
12 restricted it, I think, contrary to an earlier  
13 commitment by this Commission.

14 And I also believe that that sentence is  
15 totally unenforceable because it is not what staff  
16 does. I will not ask staff to admit that in a  
17 public session, however I know that it is not what  
18 staff does.

19 And if we're going to make new laws then  
20 those new laws should not be done for public  
21 consumption. The new laws should be done for  
22 public enforcement, or for enforcement.

23 So if this is going to be the rule then  
24 I'm going to insist that the rule be complied  
25 with. And if this rule is complied with, we will

1 find it to be grossly unworkable.

2 The next sentence says that the staff  
3 can meet with any governmental agency. It doesn't  
4 say any party can meet with any governmental  
5 agency.

6 And I think the idea was that the  
7 parties should be able to get together with a  
8 governmental agency to discuss issues. And this  
9 would prohibit that. It would only allow staff to  
10 do that. And I'm not sure that that's fair or  
11 reasonable.

12 So, that's my concern with 17(a). I  
13 will not support 17(a) as proposed. I think it is  
14 a major step backward, and I'm looking forward to  
15 input on the question for the 12 minutes or so, or  
16 five minutes we have remaining to discuss this  
17 item.

18 COMMISSIONER PERNELL: Mr. Chairman.

19 CHAIRMAN KEESE: Commissioner Pernell.

20 COMMISSIONER PERNELL: I'll be brief. I  
21 agree with Commissioner Laurie that we've been  
22 over this numerous times. However, a couple  
23 comments on his concerns.

24 One of them is that when it says staff  
25 may also meet with any governmental agency, I

1 think what was omitted is that is not a party to  
2 the proceedings. And the reason that's there is  
3 some governmental agencies also engage in power  
4 plant construction.

5 And to just say that staff can meet with  
6 any governmental agency without the other part of  
7 that sentence is a little bit misleading. I think  
8 that we have allowed flexibility in terms of this  
9 1710(a) and we went over, you know, lots of  
10 discussion.

11 So, we're in disagreement. I'm  
12 supporting 1710(a), and I think it will do the job  
13 that the staff and the Committee has intended it  
14 to do. I don't think it will--

15 COMMISSIONER LAURIE: Excuse me,  
16 Commissioner Pernell. It is not the Committee  
17 because --

18 COMMISSIONER PERNELL: I understand, I  
19 stand corrected.

20 COMMISSIONER LAURIE: Thank you.

21 COMMISSIONER PERNELL: The staff and one  
22 of the members of the Committee think that this  
23 paragraph does what the intent was, from my view.  
24 And so, Mr. Chairman, if a motion's in order --

25 CHAIRMAN KEESE: Anytime.

1                   COMMISSIONER PERNELL:  -- I will make a  
2                   motion that we -- I move that we accept staff  
3                   recommendation for 1710(a).

4                   CHAIRMAN KEESE:  We have a motion by  
5                   Commissioner Pernell to adopt section 1710 --

6                   COMMISSIONER PERNELL:  1710.

7                   CHAIRMAN KEESE:  -- to adopt section  
8                   1710, the whole entire section.

9                   COMMISSIONER ROSENFELD:  Second.

10                  CHAIRMAN KEESE:  Because that was left  
11                  out.

12                  COMMISSIONER PERNELL:  Right, okay.

13                  CHAIRMAN KEESE:  Second by Commissioner  
14                  Rosenfeld.  We have two witnesses who wish to  
15                  speak to this.  I will voice my opinion before you  
16                  speak.

17                  I personally do not believe that the  
18                  rules that apply to the Energy Commission Staff  
19                  should be any different than those that there are  
20                  with respect to other government entities.  I have  
21                  been shown no reason why they should be different  
22                  or stricter.

23                  I actually was somewhat offended at some  
24                  of the letters from municipal jurisdictions who  
25                  objected to our process when, in fact, their

1 process is identical to what they were objecting  
2 to the Energy Commission doing.

3 However, I do not -- we have been over  
4 this for a long period of time -- I do not feel  
5 that this is the forum or today is the time to  
6 make a change in that. I believe it's a subject  
7 that we have to continue dealing with, and I will  
8 continue dealing with it.

9 I hope we can get to that point, while I  
10 support, I believe, most of what Commissioner  
11 Laurie is saying, I'm not prepared to support it  
12 today.

13 COMMISSIONER LAURIE: Well, then, Mr.  
14 Chairman, I would ask that you consider leaving  
15 1710 as is, and if it's worthy of further  
16 discussion then we should have further discussion.  
17 This does substantially modify 1710.

18 And if we just want to leave it as is,  
19 well, I don't have a problem with that. But this  
20 does not do that. This substantially modifies it.

21 CHAIRMAN KEESE: It modifies it in more  
22 than one way, so I'm not prepared to go back.

23 Mr. Seedall, Mr. Harris, whichever cares  
24 to go first.

25 MR. SEEDALL: Good afternoon, Mark

1 Seedall, Duke Energy. I'll just be very brief.  
2 We largely support the comments of Commissioner  
3 Laurie today on leaving 1710 as is for now. Thank  
4 you.

5 CHAIRMAN KEESE: Thank you.

6 MR. HARRIS: Commissioners, Jeff Harris.  
7 Thank you very much for the opportunity to say  
8 some brief remarks. This is a very important  
9 issue, and it's one that requires your careful  
10 consideration.

11 I'm here on behalf of IEP, the  
12 Independent Energy Producers Association. Our  
13 position all along through this lengthy proceeding  
14 is that we have an objective. And that objective  
15 is that your rule ought to be clear and it ought  
16 to be equally applicable to staff, parties and  
17 other governmental agencies.

18 So those are our two criteria: The  
19 rules should be clear and they should be equally  
20 applicable.

21 Our concerns are that the language as  
22 proposed is neither -- it is not clear and it is  
23 not equally applicable to all parties. It's not  
24 clear in the sense that it uses the term  
25 substantive issues. Other than procedural issues

1 I think every issue could be characterized as  
2 substantive. So, for me, that rule is very  
3 unclear.

4 And second, it does carve out an  
5 exception for the staff and doesn't apply it  
6 equally across all parties. And so for those  
7 reasons we find that rule, as proposed, to be  
8 problematic.

9 The quandary that you face today is that  
10 the status quo is also unacceptable. The existing  
11 rule, while preferable to the proposed change, --  
12 let me stop and punctuate that point, the existing  
13 rule would be preferable to the proposed change.

14 But that existing rule has problems, and  
15 that existing rule is not clear. And it is not  
16 equally applied through the Commission. And the  
17 unequal application occurs, depending on really  
18 who the staff project managers are, who the staff  
19 counsel is, where the project is located, and how  
20 many opponents you have.

21 And I've had everything across the gamut  
22 where I've had staff counsel and project managers  
23 say you can meet with staff basically anytime,  
24 just let me know if anything develops. I've had  
25 project managers and staff counsel tell me, we



1 want to know before you speak to staff, but go  
2 ahead.

3 I've had them tell me that you can speak  
4 to staff once we clear the issues about which  
5 you're going to speak with them. And I've had  
6 them tell me you can't speak to staff. And I've  
7 had them tell me, we'll meet with you. I've had  
8 them tell me we'll not meet with you.

9 And I've had, ironically, a situation  
10 where they told me, we won't meet with you, but  
11 we'll do a conference call with all the same  
12 parties and all the same topics.

13 And so you have a very seriously broken  
14 system here. Unfortunately, the proposal does not  
15 fix that. IEP has offered three proposals for  
16 your consideration. They're attached to the back  
17 of our comments that were filed on December 12th  
18 in order of preference, option one, option two and  
19 option three.

20 Option one is essentially the position  
21 that puts you on equal footing with every other  
22 regulatory agency with which we are familiar,  
23 which provides for open communications with the  
24 staff.

25 Option two is offered really only

1       because we thought that there was a chance that  
2       option one might not be adopted. That would be a  
3       compromise position that basically asked you to  
4       trust the staff to know when they're being  
5       lobbied. If it's a meeting where the staff has  
6       the potential to affect the staff's  
7       recommendations to you, then the staff would file  
8       a record of conversation. But you would trust  
9       your staff to know that distinction.

10               And, again, option three is kind of our  
11       bottomline position. The worst case scenario  
12       would be to carve out an exemption for staff in  
13       these settings.

14               I've told you what's broken. I guess my  
15       frustration is that we're protecting against a  
16       problem that does not exist. The proposed changes  
17       are trying to solve a problem that does not exist.  
18       And let me briefly explain that.

19               The two words that I would use to  
20       explain that are the record. There has to be a  
21       record in your decision that can be supported by  
22       substantial evidence for your decision. And from  
23       all of our perspectives that record has to be  
24       withstanding judicial review.

25               And so if there's a meeting that occurs,

1 discussions that happen, that's simply a  
2 discussion, that's not a record. What happens  
3 next is the applicant would be required to provide  
4 information. People review that information.  
5 They have a chance to comment on it in workshops.  
6 They have a chance to see it in staff assessments.  
7 They will see it in testimony. They have an  
8 opportunity to provide rebuttal testimony.

9 They have an opportunity to cross-  
10 examine witnesses. They have an opportunity to  
11 put on their own witnesses and have those  
12 witnesses cross-examined. They have the  
13 opportunity to brief. They have an opportunity to  
14 argue at the PMPD hearing. And they have an  
15 opportunity to argue before the full Commission.

16 That aggregate is the record. That  
17 record is what's required for you to make a  
18 decision and a finding in this case. And so,  
19 over-simplifying things, you're really protecting  
20 against a problem that does not exist.

21 And I think the evidence that that  
22 problem does not exist is found in the fact that  
23 you're the only agency that we're aware of that is  
24 trying to create this special exception to solve a  
25 problem that we believe does not exist.

1           Again, the bottomline is your rule needs  
2       to be clear, and your rule needs to be equally  
3       applicable to all parties. The proposed language,  
4       we think, doesn't get us there. We're willing to  
5       continue to work with you to try to get the  
6       language that would get us to that point.

7           But we would oppose that language and  
8       offer our three options for your consideration.  
9       I'd be glad to answer any questions.

10           CHAIRMAN KEESE: I think 2002 is going  
11       to be a great year for you, Mr. Harris.

12           (Laughter.)

13           CHAIRMAN KEESE: Roberta.

14           MR. BUELL: Mr. Chairman, --

15           MS. MENDONCA: Mr. Chairman, Roberta  
16       Mendonca, the Public Adviser. Sorry I didn't  
17       submit a blue card.

18           But for the unusual way that this item  
19       has come up, the public did participate very  
20       aggressively and assertively on this issue. And I  
21       believe had they known this item was going to be  
22       factored out for special consideration today, they  
23       would be in the audience to come to the microphone  
24       instead of me.

25           But I'm here to support Commissioner

1       Pernell and the apparent way that the Committee is  
2       going to go. I do believe the public, who did  
3       participate in a very long and extended process,  
4       is in support of the regs as submitted. Thank  
5       you.

6               CHAIRMAN KEESE: Thank you.

7               MR. BUELL: Mr. Chairman.

8               CHAIRMAN KEESE: Yes.

9               MR. BUELL: My name is Richard Buell;  
10       I'm the Staff Project Manager for this item. I  
11       just wanted to make one point of clarification  
12       regarding the last sentence regarding meetings  
13       between staff and local agencies.

14               There's nothing about that sentence that  
15       in my mind limits other parties' ability to meet  
16       with agencies. In fact, that's always been the --

17               CHAIRMAN KEESE: Mr. Buell, I think I  
18       could agree with you completely. I choose not to  
19       get into that debate.

20               MR. BUELL: Okay, thank you.

21               CHAIRMAN KEESE: The specific language  
22       in a code section doesn't preclude specific  
23       language that's not in a code section.

24               We have a motion and a second.

25               COMMISSIONER LAURIE: No, we don't.

1 COMMISSIONER MOORE: No, you don't have  
2 a motion yet.

3 COMMISSIONER LAURIE: I wish to offer a  
4 motion, Mr. Chairman.

5 COMMISSIONER PERNELL: No, I'm sorry,  
6 I --

7 COMMISSIONER MOORE: Oh, I'm sorry.

8 CHAIRMAN KEESE: We have a motion by  
9 Commissioner Pernell --

10 COMMISSIONER PERNELL: I did move and --

11 CHAIRMAN KEESE: -- and a second by  
12 Commissioner Rosenfeld.

13 COMMISSIONER LAURIE: Yes, you're right.

14 COMMISSIONER MOORE: You're right, I'm  
15 sorry.

16 CHAIRMAN KEESE: Okay?

17 COMMISSIONER MOORE: It happened while I  
18 was out, I'm sorry.

19 CHAIRMAN KEESE: Anything further? All  
20 in favor?

21 COMMISSIONER MOORE: Can you just repeat  
22 the motion, Mr. Chairman, the terms --

23 CHAIRMAN KEESE: It's the adoption of  
24 section --

25 COMMISSIONER MOORE: As written?

1 CHAIRMAN KEESE: -- 1710 as written.

2 COMMISSIONER MOORE: I'm sorry, okay.

3 CHAIRMAN KEESE: All in favor?

4 (Ayes.)

5 CHAIRMAN KEESE: Opposed?

6 (Noes.)

7 CHAIRMAN KEESE: Adopted three to two.

8 Thank you very much.

9 We're going to take -- I don't know  
10 what's out there, but they've started the  
11 ceremony. So as we filter out, we're going to  
12 take a recess until this is over. I would say  
13 we'll be back here at 1:00.

14 (Whereupon, at 12:25 the business  
15 meeting was adjourned, to reconvene at  
16 1:13 p.m., this same day.)

17 --o0o--

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION 1:13 p.m.

2 CHAIRMAN KEESE: We shall return to item  
3 12.

4 COMMISSIONER LAURIE: Mr. Chairman, is  
5 Commissioner Moore coming back?

6 CHAIRMAN KEESE: I have no idea --  
7 Commissioner Moore -- I have no idea. Send the  
8 word out.

9 All right, we're back in. We'll take up  
10 item 12, Department of General Services. Possible  
11 approval of interagency agreement 500-01-015 for  
12 \$97,000 for a field study of the impact of under-  
13 floor air distribution at the Capitol East End  
14 Complex.

15 COMMISSIONER LAURIE: Move the  
16 recommendation, Mr. Chairman.

17 COMMISSIONER ROSENFELD: Second.

18 CHAIRMAN KEESE: We have a motion and a  
19 second. Any public comment?

20 All in favor?

21 (Ayes.)

22 CHAIRMAN KEESE: Opposed? Adopted three  
23 to nothing. Thank you.

24 I wish we had more, but that was the  
25 best we could get out of them on the East End



1 Building, so we'll test it.

2 Item 13, Title 20 data collection  
3 regulations. Possible adoption -- maybe we should  
4 wait for --

5 COMMISSIONER ROSENFELD: We need  
6 Commissioner Moore.

7 CHAIRMAN KEESE: Let's hold that one.  
8 item 14, the renewable guidelines is moved to the  
9 January 9th business meeting.

10 Item 15 duplicates item 16, so we will  
11 take up item 16, Energy Conservation Assistance  
12 Act Account. Possible approval of five loans, two  
13 to the County of Humboldt for \$129,810; two to  
14 East Bay Municipal Utility District for  
15 \$1,991,945; and one to the Los Angeles Community  
16 College District for \$436,032.

17 COMMISSIONER ROSENFELD: What's the  
18 connection between 15 and 16?

19 CHAIRMAN KEESE: They're identical.  
20 They just --

21 MR. SLOSS: Mike Sloss of the staff.

22 CHAIRMAN KEESE: -- two different people  
23 submitted them.

24 MR. SLOSS: Yeah, they're the exact same  
25 items, Commissioner Rosenfeld. These are

1 traditional energy conservation assistance loans.  
2 I would give you all the details on all the loans,  
3 but I don't know them. And --

4 CHAIRMAN KEESE: But they will be paid  
5 off in the appropriate time --

6 MR. SLOSS: But they will be paid off,  
7 and they meet all the criteria that we have.

8 CHAIRMAN KEESE: Thank you.

9 MR. SLOSS: They've been to the  
10 Efficiency Committee, also.

11 CHAIRMAN KEESE: Which recommended  
12 support.

13 COMMISSIONER ROSENFELD: I move the  
14 loans.

15 CHAIRMAN KEESE: Moved by Commissioner  
16 Rosenfeld.

17 COMMISSIONER LAURIE: Second.

18 CHAIRMAN KEESE: Second by Commissioner  
19 Laurie. Any public comment?

20 All in favor?

21 (Ayes.)

22 CHAIRMAN KEESE: Opposed? Approved  
23 three to nothing.

24 Item 17, alternative fuels  
25 infrastructure programs. Possible approval of ten

1 alternative fuel infrastructure grants as a result  
2 of the September 2001 program opportunity notice.  
3 The total amount of grant funding is \$2,321,427.

4 Mr. Argentine.

5 MR. ARGENTINE: Good afternoon,  
6 Commissioners. Again, staff is requesting  
7 Commission approval of ten grants to assist the  
8 public agencies in their alternative fuel  
9 infrastructure.

10 The grants are the result, again, of the  
11 September 10th program opportunity notice. We  
12 received 13 proposals; put together scoring team.  
13 Ten proposals passed and were recommended for  
14 funding and approved through the November 20th  
15 Fuels and Transportation Committee meeting.

16 The grants will be for LNG, LCNG, CNG  
17 and propane, which is consistent with our  
18 September 2001 market assessment.

19 The grantees will provide approximately  
20 \$5 for every \$1 the Commission grants.

21 CHAIRMAN KEESE: This was reviewed by  
22 the Committee and approved. Do we have a motion?

23 COMMISSIONER ROSENFELD: I move the  
24 grants.

25 COMMISSIONER LAURIE: Second.

1                   CHAIRMAN KEESE: Motion by Commissioner  
2                   Rosenfeld; second by Commissioner Laurie. Any  
3                   public comment?

4                   All in favor?

5                   (Ayes.)

6                   CHAIRMAN KEESE: Opposed? Adopted three  
7                   to nothing. Thank you.

8                   So let's hold item 18, also. Item 19,  
9                   Clean Energy Systems, Inc. Possible approval of  
10                  contract 500-01-013 for \$2,003,286 to demonstrate  
11                  the durability and reliability of a zero emission  
12                  gas-fired power plant. CES will design and build  
13                  a 500 kilowatt generator which will be installed  
14                  to drive a steam turbine and generate electricity  
15                  for two years at Mirant Delta's Contra Costa Power  
16                  Plant in Antioch.

17                  MR. BATHAM: Good afternoon,  
18                  Commissioners. I'd like to also give an overview  
19                  of the next two items in addition to number 19;  
20                  19, 20 and 21 are all three contracts that are  
21                  before you as the result of a solicitation that  
22                  was issued by the PIER program. And nine projects  
23                  were approved by the R&D Committee on September  
24                  the 9th.

25                  These are three of those -- excuse me,

1       September the 6th.  These are three of those nine.  
2       Two earlier projects have come before you and have  
3       been approved.

4               COMMISSIONER LAURIE:  Mr. Batham,  
5       perhaps the Chairman would be willing to call all  
6       three items?  Would you like to do that?

7               CHAIRMAN KEESE:  Sure.  Do you want  
8       to -- are they --

9               MR. BATHAM:  I was just going to give an  
10       overview of the process that these three items  
11       came from, and then we do have staff here --

12              CHAIRMAN KEESE:  Why don't you do that,  
13       and then we'll do the procedural thing after you  
14       make your general comments.

15              MR. BATHAM:  The request for proposals  
16       that I'm referring to was issued in April; a  
17       number of proposals were submitted.  Of those  
18       proposals 13 received a passing score, nine of  
19       which were before the R&D Committee and approved  
20       by the R&D Committee on September the 6th.  These  
21       are three of those nine proposals.

22              The total funding that was authorized by  
23       the Committee was approximately \$22 million, made  
24       up, as I said, those nine proposals.  They were  
25       based primarily on fuel cell and small industrial

1 and microturbine technologies. There was four of  
2 the fuel cell and five of the microturbine  
3 technologies that were proposed and approved.

4 As I mentioned, Dr. John Beyer is here  
5 for the first one, and Dr. Art Soinski, who is on  
6 his way down, will be here to discuss the  
7 technical details of the second two proposals,  
8 which were number 20 and 21 on the agenda.

9 Thank you.

10 CHAIRMAN KEESE: We have 35 minutes left  
11 in this meeting. I have an interest in these, but  
12 do we care to -- are we going to wait for an in-  
13 depth, or --

14 COMMISSIONER LAURIE: No. I would ask  
15 you to call 20 and 21.

16 CHAIRMAN KEESE: We have announced item  
17 number 19; I will also announce item 20, Gas  
18 Technology Institute. Possible approval of  
19 contract 500-01-020 for \$2,999,998 to cofund  
20 continued development of reduced temperature  
21 electrode supported, planar solid oxide fuel cell  
22 technology.

23 And item 21, Lawrence Livermore National  
24 Laboratory. Possible approval of contract  
25 500-01-014 for \$3 million to cofund the further

1 development of materials technology leading to the  
2 demonstration of a 10 kilowatt solid oxide fuel  
3 cell stack operating directly on natural gas at  
4 650 degrees Centigrade, and with a high power  
5 density.

6 COMMISSIONER ROSENFELD: I'm happy to  
7 move 19, 20 and 21.

8 CHAIRMAN KEESE: Okay, --

9 COMMISSIONER LAURIE: Second.

10 CHAIRMAN KEESE: -- we have a motion on  
11 19, 20 and 21 by Commissioner Rosenfeld; second by  
12 Commissioner Laurie. Any public comment on these?

13 MR. BOYD: Mr. Chairman.

14 CHAIRMAN KEESE: Mr. Boyd.

15 MR. BOYD: I like anything that says  
16 zero emissions, so I'm --

17 (Laughter.)

18 MR. BOYD: -- in favor of --

19 COMMISSIONER LAURIE: If only we can get  
20 that out of some Commissioners --

21 (Laughter.)

22 MR. BOYD: Some built-in bias left over  
23 from years ago. These are very commendable  
24 projects.

25 CHAIRMAN KEESE: Thank you, and as I

1 say, we're going to try to complete the agenda.  
2 Other than that, I guess I will ask staff to give  
3 me a briefing on these issues sometime.

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? We have  
7 adopted items 19, 20 and 21 three to nothing.

8 Mr. Larson, are we going to have --  
9 Commissioner Moore going to be --

10 MR. LARSON: They're looking for him.  
11 He wasn't near the phone and we called his office  
12 and there was no answer.

13 CHAIRMAN KEESE: Okay, well --

14 COMMISSIONER ROSENFELD: Here he is.

15 CHAIRMAN KEESE: He's not looking well,  
16 either.

17 COMMISSIONER MOORE: I apologize --

18 CHAIRMAN KEESE: No problem, do you want  
19 to take up your items. We'll take up item 13.  
20 Title 20 data collection regulations. Possible  
21 adoption of express terms, 15-day language, for  
22 the Commission's regulations pertaining to data  
23 collection and disclosure of Commission records.

24 COMMISSIONER MOORE: Thank you. Mr.  
25 Chairman, -- and I apologize for my absence. On



1       this item, the data collection items, we've been  
2       dealing with this for some time now, as with the  
3       other item. And I believe that we have gotten  
4       pretty close to resolution on this.

5               And that we have tightened the terms up  
6       such that it's clear that what's intended here is  
7       that when these items would come up, the direction  
8       of the Committee would be the dominant force here.  
9       That the Executive Officer would operate on behalf  
10      of the Committee, which is operating on behalf of  
11      the Commission.

12             And that we have tightened up the nature  
13      of the items that we would ask for in this. And  
14      perhaps Andrea can elaborate on that. The  
15      unfortunate thing is that we're probably going to  
16      have to institute 15-day language on this, which  
17      I'm comfortable with. We would take it up at the  
18      first of the year, but probably wouldn't be able  
19      to act on it today.

20             Andrea, maybe you can elaborate on that.

21             MS. GOUGH: I'm Andrea Gough.

22             CHAIRMAN KEESE: Your microphone is not  
23      on, or else you're going to have to get real  
24      close.

25             MS. GOUGH: Okay, I'm Andrea Gough with

1 the Energy Commission Staff. And after we issued  
2 15-day language earlier this month there's been  
3 expressed concern that there is one section that  
4 gave -- it's the Executive Director, no offense,  
5 Mr. Larson -- too broad a power to ask for  
6 additional data than what's described in the  
7 regulation.

8 And so the Electricity Committee has  
9 been working on tightening up that language. And  
10 as Commissioner Moore mentioned, the way that it's  
11 written now, the Executive Director would work  
12 under the guidance of whichever is the appointed  
13 data collection committee of the time before he or  
14 she could move forward to ask for additional data  
15 from entities in California.

16 CHAIRMAN KEESE: So, are you submitting  
17 additional language at this time, or are we still  
18 working on it?

19 COMMISSIONER MOORE: Well, we have some  
20 changes, and perhaps Andrea can read the changes.  
21 It's only one paragraph. Read it as it would be  
22 amended right now. And as Andrea said, and I  
23 suppose it goes without saying, this is not  
24 specific --

25 CHAIRMAN KEESE: Let me just ask. I

1       have three people who have indicated they wished  
2       to speak to this issue today. Do they have a  
3       copy? Do you have a copy of the language? Okay.

4               MS. GOUGH: Also I did put a copy out on  
5       the back table.

6               CHAIRMAN KEESE: Thank you.

7               MS. GOUGH: They may also be -- it's the  
8       end of a comment period for just the 15-day  
9       language that goes further than this one section  
10      that I'm going to read, and they may have comments  
11      on other sections but we don't --

12              CHAIRMAN KEESE: Thank you. I just  
13      wanted to make sure they had this language. Read  
14      it into the record then, please.

15              MS. GOUGH: At the direction of a  
16              Committee assigned responsibilities over  
17              data collection, the Executive Director  
18              may make a written request to an entity  
19              for information reasonably required for  
20              analysis by Commission Staff or any  
21              other person designated by the  
22              Commission, including without limitation  
23              disaggregations of data required by this  
24              article. The data shall be provided  
25              within the time specified by the

1 Executive Director.

2 CHAIRMAN KEESE: Thank you. Anything --

3 COMMISSIONER MOORE: No, Mr. Chairman,  
4 other than just to say that it should be obvious  
5 that this is not directed at our Executive  
6 Director. It's directed at the Office of the  
7 Executive Director on behalf of the Commission.

8 The Executive Director, as with the  
9 subpoena issue earlier, is acting as our agent and  
10 is our surrogate. And so that's what this is  
11 intended to do, is to clarify that what we're  
12 asking for is what's in the regulations now.

13 We've called out a list that's very  
14 explicit about what we want generators to provide.  
15 We have gone through an extensive set of hearings  
16 and discussions about what ought to be excluded  
17 from that list.

18 I believe that we're all in agreement at  
19 this time, and it's clear that we're not asking  
20 for anything currently that is not on that list.

21 But, that the law allows us to do that.  
22 The law that set up the Warren Alquist Act, the  
23 statutes that implement that law. So, I just want  
24 to be clear that we have broad authorities which  
25 in order to utilize we would have to go through a

1 public process to say we were intending to gather  
2 different information than what we're asking for  
3 today.

4 And perhaps you'd like to hear from the  
5 people that have been addressing us on this issue.

6 CHAIRMAN KEESE: Okay. Mr. Alvarez.

7 MR. ALVAREZ: Manuel Alvarez, Southern  
8 California Edison. I believe each of your offices  
9 received a letter that we submitted. I guess I'm  
10 just checking to see if you received that. If  
11 not, I do have additional copies.

12 COMMISSIONER MOORE: Well, I know our  
13 office did.

14 MR. ALVAREZ: Okay. I have three  
15 points. Actually, you know, we don't have any  
16 major objections to the regulations as proposed.  
17 In fact, we can support the proposal for the  
18 request that Andrea brought up about the Committee  
19 overseeing the Executive Director's request.

20 What we do bring up is basically two  
21 items we want to ask for clarification. They both  
22 deal with load metering data under section 1344.

23 One was the deadline of June 1st. We  
24 originally had requested a deadline of December  
25 1st, but have suggested to the Committee that we

1       could possibly meet a September 1st deadline for  
2       this first cycle. And then subsequently annual  
3       cycles will take place on June 1st.

4               The other item we want to bring to your  
5       attention, and neither of these require any  
6       regulatory changes or any language changes,  
7       dealing with additional samples and creating  
8       samples, what's referred to as a 90/10 rule.

9               If it's necessary for us to create those  
10       new samples the level of accuracy, at least  
11       initially, may be reduced, so we want the  
12       Commission to be aware of that as we work through  
13       that process in collecting that data. Hopefully  
14       the accuracy can meet that requirement.

15              That's it, thank you.

16              COMMISSIONER MOORE: Mr. Chairman,  
17       before Mr. Alvarez leaves, let me just say that on  
18       the data cycle I'm comfortable with that. Trying  
19       to get up so that we're on a consistent data cycle  
20       is obviously one of our primary goals. So, what  
21       he's asking for is not unreasonable in this first  
22       iteration.

23              What's important is that we get a flow  
24       of data going, that's what this is all about.

25              CHAIRMAN KEESE: Thank you. Paula Ham-

1 Su. Ms. Ham-Su.

2 MS. HAM-SU: Thank you. Paula Ham-Su  
3 with PG&E. Our comments are also about section  
4 1344. PG&E also does not believe that we can meet  
5 the June 1 deadline. We have some data  
6 constraints that are beyond our control, and --

7 CHAIRMAN KEESE: Does September 1 look  
8 better?

9 MS. HAM-SU: Yes.

10 CHAIRMAN KEESE: Okay, thank you.  
11 Christine Jun.

12 MS. JUN: If it would please the  
13 Commission I would request that I could speak  
14 after Mr. Kelly. My comments go toward supporting  
15 IEP's filing that was made today.

16 CHAIRMAN KEESE: Okay. Mr. Kelly.  
17 That's fine.

18 MR. KELLY: Steven Kelly with  
19 Independent Energy Producers. And we've been  
20 working very closely with the staff on trying to  
21 develop language that we could support. We filed  
22 comments today which indicated three areas of  
23 concern we had on the existing 15-day language.

24 In my conversations with staff, I  
25 believe that we have agreement on the conceptual

1 language that needs to be included in section  
2 1351. We've had some difficulty translating that  
3 concept into words.

4 The language that Andrea read just a  
5 minute ago I still think has some problems in  
6 translating what Commissioner Moore's  
7 articulating, which is that the Executive Director  
8 has the authority to go after the data that is in  
9 the regulations, that's gone through a process  
10 that the Commission has implemented to define what  
11 that range of data are, and the timing for when  
12 those have to be reported.

13 And I agree with him on that. And I  
14 think in discussions with staff they also agree  
15 with that. I have concerns that the language that  
16 has been circulated as, I guess, revised 15-day  
17 language, meets that test. But I want to go to  
18 work with staff between now and the release of the  
19 next version of the 15-day language to try to  
20 tighten that up. Because we think we can  
21 accomplish that and solve some of the outstanding  
22 issues.

23 CHAIRMAN KEESE: Okay, and that's the  
24 one that's left from your three issues?

25 MR. KELLY: That is the critical one,



1       yes. If we could solve that issue dealing with  
2       the authorities of the Executive Director I think  
3       my other issues will pale.

4               Unfortunately, the way it works, if I  
5       can't solve that issue there is an  
6       interconnectedness between that issue and some of  
7       the others that exacerbates the other points that  
8       I've made in my comments.

9               CHAIRMAN KEESE: Okay. Ms. Jun.

10              MS. JUN: Thank you, Mr. Chairman. I  
11       quickly have read IEP's comments filed today, and  
12       I'm Christine Jun; I represent the Cogeneration  
13       Association of California and the Energy Providers  
14       and Users Coalition. These are groups of  
15       cogenerators and qualifying facilities in  
16       California.

17              I've quickly gone over IEP's comments  
18       and would strongly support IEP's comments that  
19       were filed today. In particular the  
20       recommendations regarding the information that  
21       generators are to submit to the CEC.

22              We would support the status quo of the  
23       reporting requirements. Second, we would support  
24       that the Commission not adopt the revised  
25       definition of electric utility.

1           Just some comments to augment IEP's  
2       comments. The CEC does have broad authority to  
3       collect data from electric utilities, which is  
4       defined very broadly under the Public Resources  
5       Code.

6           The Public Resources Code does make a  
7       distinction between cogenerators and quote,  
8       traditional energy suppliers. And I would point  
9       to sections 25004.2 and 25008. And that the  
10      Public Resources Code and this Commission  
11      historically has recognized a distinction between  
12      cogenerators and traditional generators, i.e.,  
13      traditionally investor-owned utility or publicly  
14      owned utilities, or traditional load serving  
15      entities.

16          Third, we would support IEP's third  
17      recommendation that the proposed revision to  
18      section 1351 not be approved as it's currently  
19      drafted. And we appreciate staff's continued  
20      openness and willingness to work with parties.

21          Certainly we appreciate the present  
22      language concerning pretty onerous burdensome  
23      reporting requirements on electric power plants.

24          I also wanted to comment on the current  
25      proposed language, the current 15-day language on

1 forecast studies. And just seconding IEP's  
2 comments that we would like to cooperate and see  
3 that what forecast studies would be submitted  
4 would just be submitted in a not so onerous or  
5 burdensome manner as might appear. Including the  
6 submission of what forecasting information we  
7 have.

8 We don't believe that cogenerators and  
9 QFs are required to affirmatively conduct forecast  
10 studies. What forecast studies we do have we  
11 would be willing to submit.

12 Thank you.

13 CHAIRMAN KEESE: Thank you. I'd like to  
14 ask the Committee and Staff, are we on the same  
15 wave length? Now, we've heard three speakers say  
16 they're working with staff, and that they think we  
17 may be okay on the 15-day language shortly.

18 COMMISSIONER MOORE: For the benefit of  
19 the Commissioners, let me work backwards and Ms.  
20 Jun has offered a couple of topics that ought to  
21 be clarified.

22 First, there's no intention to make  
23 someone conduct a forecast who doesn't currently  
24 conduct it. So that just so we're clear on the  
25 intent on that. We're not trying to create a

1 requirement to do something that you don't already  
2 do. So I think that's a fair call, and it's one  
3 that the Commissioners ought to be aware of.

4 Second, with regard to the changing  
5 definition of what's an electric generator,  
6 there's no question that we've expanded that, in  
7 the proposed language that we had expanded that  
8 definition. That's a fair call. We did it  
9 deliberately, but I hope carefully, in the sense  
10 that we're trying to collect enough information to  
11 help us understand how the system is actually  
12 functioning today, as opposed to three years ago.  
13 The system does include cogenerators as part of  
14 the electric mix. And we want to understand how  
15 they behave.

16 But there is -- the cogenerators do not  
17 function as a utility does. They certainly don't  
18 have the staff or the resources to be able to  
19 respond the way a utility was.

20 So, hopefully the way the regulations  
21 will, in their final iteration, be approved,  
22 because some regulation is going to be approved,  
23 let's face it. There will be some change that's  
24 adopted here that it will not represent an undue  
25 or unusual burden for the cogenerators.

1                   And then finally, Mr. Chairman, to your  
2                   first point, and that is are we all talking about  
3                   the same change, and are we close. I would have  
4                   said as of Sunday night when these things were  
5                   still circulating back and forth, that I thought  
6                   we were awfully close.

7                   So I would say that in the next  
8                   iteration we're down to fine tuning one or two  
9                   words out of that definition, as far as  
10                  responsibilities of the Executive Director, and as  
11                  far as the line that said that he had to tithe  
12                  part of his annual salary to the Committee, we've  
13                  deleted that.

14                  (Laughter.)

15                  COMMISSIONER MOORE: So his objections  
16                  are removed on that.

17                  MR. SPEAKER: The impact of that is  
18                  going down by time --

19                  COMMISSIONER MOORE: Yeah, but the  
20                  impact is going down. So, I believe that we are  
21                  awfully close, and that in the final 15-day  
22                  language, which would have us working on that in  
23                  January, that would be January 9th, that we would  
24                  have that come up, I believe that we will --

25                  CHAIRMAN KEESE: We're not going to vote

1 on anything today?

2 COMMISSIONER MOORE: We won't end up  
3 taking any action today. Mr. Kelly may have  
4 something --

5 CHAIRMAN KEESE: Okay, thank you. Mr.  
6 Kelly wants to add something. All right.

7 COMMISSIONER MOORE: But I think that  
8 addresses all of Ms. Jun's points and we're taking  
9 it very seriously.

10 CHAIRMAN KEESE: Thank you.

11 MR. KELLY: If I can add just one  
12 suggestion. As parties to this proceeding we are  
13 looking at redlines of redlines of redlines and  
14 it's very confusing.

15 It might be helpful if staff could  
16 release what the whole regs will look like if all  
17 this were adopted so that we could see it in one  
18 place. It is very complicated to comment on a  
19 change, what is taking back a change of a previous  
20 45-day language. It's very difficult for us to  
21 convey to you what our issues are.

22 COMMISSIONER MOORE: You know, that's a  
23 fair and very practical comment. I was having --  
24 part of the problem, I'll just tell you for your  
25 future edification, in doing this is that

1 sometimes the redline of the redline doesn't show  
2 up in what gets released over the net, and what's  
3 available electronically.

4 So we need to take that into account  
5 where we're actually publishing these things.  
6 Because, at least for me, it was very hard to  
7 discern. I had an interpreter between me and the  
8 document and I was there while it was being  
9 written.

10 So, I agree.

11 MR. KELLY: Having a document that we  
12 could look at and take and say, this is what it's  
13 supposed to look at based on the 15-day language  
14 that's out --

15 COMMISSIONER MOORE: Andrea, can we  
16 produce that in the next day or so?

17 MS. GOUGH: Yeah, no, that's a  
18 reasonable request.

19 MR. KELLY: Thank you.

20 CHAIRMAN KEESE: Okay, thank you. Any  
21 further comment on this item? Item's over  
22 until --

23 MS. FLEMING: Commissioner?

24 CHAIRMAN KEESE: Sure.

25 MS. FLEMING: I thought I had put in a

1 blue card.

2 CHAIRMAN KEESE: Yeah, but you don't  
3 understand numbers. This is not 13. Oh, yes,  
4 this is 13.

5 (Laughter.)

6 CHAIRMAN KEESE: Sorry. Your lucky  
7 number.

8 MS. FLEMING: For the record I'm Pat  
9 Fleming representing Semptra Energy today, on  
10 behalf of SoCalGas and San Diego Gas and Electric.

11 I had overnighted comments dated  
12 December 17th. If you have not received them, I  
13 will happily put them into the record, or give you  
14 copies.

15 COMMISSIONER MOORE: Please do give  
16 them. Pat, I saw those, although I don't have  
17 them exactly in front of me, but since we're going  
18 to take this up again, then making sure --  
19 actually, you know what, I have them on my desk  
20 upstairs.

21 So, yes, we did get these.

22 CHAIRMAN KEESE: Somehow I didn't.

23 COMMISSIONER MOORE: Yeah, I'm sorry,  
24 Mr. Chairman, but this was submitted. Pat, did we  
25 get it yesterday actually? It came --



1 COMMISSIONER ROSENFELD: I got it  
2 yesterday.

3 COMMISSIONER MOORE: Yeah, it came  
4 yesterday.

5 MS. FLEMING: You may have gotten it  
6 yesterday. Things get piled up or backed up  
7 sometimes.

8 Let me -- would you like for me to read  
9 it into the record or just try to summarize --

10 CHAIRMAN KEESE: No, we've got it.  
11 We've received it, so just tell us what, to the  
12 extent that --

13 MS. FLEMING: Okay. On load metering  
14 study, because of work that needs to be done  
15 before we can do the load metering study, we are  
16 advocating for a September 1st due date annually  
17 on that.

18 And --

19 CHAIRMAN KEESE: Well, let's ask --

20 COMMISSIONER MOORE: That's consistent  
21 with what --

22 CHAIRMAN KEESE: -- we've had two  
23 requests for that. Is that --

24 COMMISSIONER MOORE: -- SCE and with  
25 PG&E.

1                   CHAIRMAN KEESE:  Is staff okay with  
2                   that?

3                   COMMISSIONER MOORE:  Well, they're not  
4                   okay with it, but we're probably not going to be  
5                   able to improve on it, so if we actually get it on  
6                   that date, then we're going to --

7                   CHAIRMAN KEESE:  Okay, you don't have to  
8                   answer any more.

9                   MS. FLEMING:  Another item we'd like to  
10                  comment on is the proposal to go forward with  
11                  repealing -- unwilling to go forward with  
12                  repealing section 1345 demand forecast, 1347  
13                  resource plans, and 1348 pricing and financial  
14                  information.

15                 We thought throughout this data  
16                  collection proceeding that we'd come to an  
17                  agreement that the staff would do the forecast.  
18                  We don't have as much staff at the utility to do  
19                  that as we used to.

20                 You put out the report entitled  
21                  generator and consumer data reporting  
22                  requirements; the publication number is 300-99-  
23                  007, in which you have forecasts.  We feel that  
24                  we've been working with the staff very well, and  
25                  we feel like the staff's been doing a good job of

1 forecasting. And especially resource plans are a  
2 bit difficult for utilities these days.

3 So I think that summarizes my comments.

4 CHAIRMAN KEESE: And I heard --

5 COMMISSIONER MOORE: On the -- Mr.  
6 Chairman, on Pat's second point, let me ask staff  
7 to respond to that with regard to what we're  
8 asking for and to clarify our position on that, if  
9 I can. Mr. Jaske is probably the right person to  
10 deal --

11 DR. JASKE: Commissioners, Pat is noting  
12 correctly that in the most recent 15-day language  
13 it's a change from the previous 45-day language to  
14 preserve the Commission's existing so-called CFM  
15 regulations.

16 The accompanying documents to the  
17 express terms, I think, explain circumstances that  
18 has led to that change. And they are, frankly  
19 that the entire world has changed. AB-1890 has  
20 not functioned as intended. We know all about all  
21 the problems that have ensued. It's very clear  
22 there's a potential for utilities returning to  
23 functions that they used to perform prior to AB-  
24 1890.

25 There are proceedings at the PUC

1       underway right now to investigate and determine  
2       procurement functions for utilities for various  
3       energy products, including long-run contracts.

4               Under those circumstances it is apparent  
5       that there is the possibility that the utilities  
6       will return to the necessity for having demand  
7       forecasts and resource assessments that are long  
8       term, and that intersect with our responsibilities  
9       as written in the Warren Alquist Act.

10              Therefore, staff had urged the Committee  
11       in issuing the 15-day language, the Committee, I  
12       think, agreed that we should not eliminate the CFM  
13       regs. We should watch what's happening with the  
14       resolution of all these issues about what utility  
15       responsibilities are. And when that becomes  
16       clearer we will then modify the CFM regs  
17       appropriately.

18              They will not be enforced in the  
19       meantime. There is no intent to obligate  
20       utilities, generators or anyone else by virtue of  
21       the definition of electric utility, to submit, you  
22       know, the old CFM type filings.

23              Thank you.

24              COMMISSIONER MOORE: Thank you, Mr.  
25       Jaske. Mr. Chairman, although it may seem like a

1 fine point, let me just underline what Mr. Jaske  
2 is saying, and what I'm trying to leave you with  
3 here.

4 And that is that it's not clear to me  
5 what kind of authority or what kind of actions you  
6 or a succeeding Electricity and Natural Gas  
7 Committee may want to take in order to develop the  
8 kind of forecast that the Executive Director is  
9 going to need to publish on your behalf. I just  
10 don't know.

11 But I do know that there will be a need  
12 for that data, and a need for cooperation from the  
13 utilities in order to go there. So nothing in  
14 this is to suggest that we're not getting that  
15 cooperation, or that we're not working together in  
16 this.

17 But I am trying to preserve the  
18 authority of the Commission while at the same time  
19 not using the letter of that authority today. So,  
20 in the largest sense of the word, this is a faith  
21 walk on everyone's part.

22 I guess we just have to be clear that  
23 while this is in the regulations, it's not being  
24 sought today. And in order to be sought, in order  
25 to actually be implemented, it's our intention

1       that the Committee, the then-sitting Committee,  
2       would have to conduct a series of public  
3       proceedings in which recommendations would be  
4       taken and an action plan would be developed which  
5       would then come back to the full Commission for  
6       implementation. And, of course, that  
7       implementation takes the effect of the Executive  
8       Officer releases a request of some kind.

9               But, there is no intention, as Mr. Jaske  
10       said, to do that today. But I just want to make  
11       sure everyone understands that the authority is  
12       there. We're very intentionally not taking away  
13       the authority.

14              MS. FLEMING: Let me close my comments  
15       in response by just reading one sentence from our  
16       letter: SDG&E recommends the Commission hold  
17       workshops and hearings in the future as needed to  
18       make any adjustments in the regulations that are  
19       being put into place under the current data  
20       collection proceeding.

21              That paragraph relates to what we were  
22       just talking about.

23              CHAIRMAN KEESE: Right.

24              COMMISSIONER MOORE: Yes, it does.

25       And --

1                   CHAIRMAN KEESE:  And I just heard from  
2                   the Chairman of the Committee that that's the  
3                   intent.  Okay.

4                   MS. FLEMING:  Okay.  Thank you.

5                   CHAIRMAN KEESE:  Thank you.

6                   COMMISSIONER MOORE:  So, Mr. Chairman,  
7                   we'll publish new language and have that back to  
8                   you, the intention is to have it back to you on  
9                   January 9th.

10                  CHAIRMAN KEESE:  Thank you.  Item 18,  
11                  renewable resources.  Possible approval of changes  
12                  to volume three of the emerging renewables  
13                  resource account guide book to implement AB-29X.

14                  COMMISSIONER MOORE:  Thank you.  Mr.  
15                  Chairman, on the renewable guidelines, you know  
16                  that we've not routinely, but periodically, come  
17                  back and make changes to the standards and  
18                  guidelines that we operate under in order to  
19                  respond to market conditions.

20                  This is another of those.  And basically  
21                  this came about because we were faced with a  
22                  problem that we didn't anticipate coming up in  
23                  terms of testing and perhaps Tony can elaborate on  
24                  that.

25                  //

1 MR. BRASIL: Yeah, my name's Tony  
2 Brasil.

3 COMMISSIONER LAURIE: Care to make a  
4 motion, Commissioner Moore?

5 COMMISSIONER MOORE: I'd move for  
6 approval of the change in the guide book.

7 CHAIRMAN KEESE: Motion by Commissioner  
8 Moore.

9 COMMISSIONER LAURIE: Second.

10 CHAIRMAN KEESE: Second by Commissioner  
11 Laurie. Any further comments up here?

12 All in favor?

13 (Ayes.)

14 CHAIRMAN KEESE: Opposed? Beautiful  
15 job.

16 MR. BRASIL: Thank you, Commissioners.

17 CHAIRMAN KEESE: Thank you. Four to  
18 nothing.

19 That takes us to item 22, Bioresource  
20 Consultants. Possible approval of contract 500-  
21 01-019 for \$420,670 to complete field work and  
22 develop a tool for wind industry regulators to use  
23 to mitigate and reduce bird fatalities at  
24 Altamont.

25 COMMISSIONER LAURIE: Mr. Chairman, I



1 would defer to Commissioner Rosenfeld for a  
2 motion, please.

3 COMMISSIONER ROSENFELD: I move item 22.

4 COMMISSIONER LAURIE: Second.

5 CHAIRMAN KEESE: Motion, Commissioner  
6 Rosenfeld; second, Commissioner Laurie. Any  
7 public comment?

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Adopted four  
11 to nothing.

12 Item 23, University of California Davis.  
13 Possible approval of interagency agreement 300-97-  
14 009, amendment 5, to increase funding and time for  
15 interns. Administrative.

16 COMMISSIONER MOORE: Yes, Mr. Chairman,  
17 on the item, we, and I know Leigh's here to back  
18 us up if we need it, but basically what we're  
19 asking for is for some support to get interns to  
20 work on this project.

21 My hope is that this continues to  
22 solidify our use of outside folks who ultimately  
23 might become a resource for us. I commend this to  
24 the Executive Director; I know he feels a little  
25 put upon, but I hit him on staff resources, but

1       frankly, I guess in the technical areas, in the  
2       areas of research, I worry mightily that we're not  
3       deep enough in our staffing. And this is one way  
4       to get there and assist us. And frankly, it's a  
5       good way to train those folks, as well.

6               And I'd move for approval.

7               COMMISSIONER LAURIE: Second.

8               CHAIRMAN KEESE: Motion, Commissioner  
9       Moore. Second, Commissioner Laurie.

10              All in favor?

11              (Ayes.)

12              CHAIRMAN KEESE: Opposed? Adopted four  
13       to nothing.

14              Item 25 has been moved to the January  
15       9th agenda.

16              COMMISSIONER ROSENFELD: 24.

17              CHAIRMAN KEESE: Going too fast.

18       Building Industry Institute, item 24. Possible  
19       approval of contract 400-01-024 for \$397,000 to  
20       provide builder training to a level of  
21       understanding in compliance with the State Energy  
22       Code.

23              COMMISSIONER LAURIE: Mr. Chairman, this  
24       is a continuation of the very successful program  
25       where BII has been the contractor for the training

1 of local officials in regards to enforcement of  
2 our building standards.

3 It was a successful program. I think  
4 the program should continue. I would defer to  
5 Commissioner Rosenfeld as Second Member of the  
6 Energy Efficiency Committee. I do, however,  
7 strongly support the recommendation.

8 COMMISSIONER ROSENFELD: So I move item  
9 24.

10 COMMISSIONER LAURIE: I'd like to  
11 second, please.

12 CHAIRMAN KEESE: Motion, Commissioner  
13 Rosenfeld; second, Commissioner Laurie. Any  
14 further comments?

15 All in favor?

16 (Ayes.)

17 CHAIRMAN KEESE: Opposed? Adopted four  
18 to nothing. Thank you.

19 As I said, item 25 is over until January  
20 9th. Item 26, City of Oxnard, possible approval  
21 of contract 400-99-010, amendment 1, to extend the  
22 contract to March 31, 2002. Time extension.

23 COMMISSIONER ROSENFELD: I move item 25.

24 CHAIRMAN KEESE: Motion by Commissioner  
25 Rosenfeld.

1 COMMISSIONER LAURIE: Second.

2 CHAIRMAN KEESE: Second by Commissioner

3 Laurie. All in favor?

4 (Ayes.)

5 CHAIRMAN KEESE: Opposed? Four to

6 nothing.

7 Item 27, California State University at  
8 Chico, research foundation instructional media  
9 center. Possible approval of a time extension for  
10 contract 500-99-029, amendment 1.

11 COMMISSIONER ROSENFELD: I move item 27.

12 CHAIRMAN KEESE: Motion by Commissioner  
13 Rosenfeld.

14 COMMISSIONER MOORE: Second.

15 CHAIRMAN KEESE: Second by Commissioner  
16 Moore.

17 All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed? Adopted four  
20 to nothing.

21 Item 28, Laurits R. Christensen  
22 Associates. Possible approval of contract 300-99-  
23 018, amendment 3, to extend the contract by three  
24 months.

25 COMMISSIONER MOORE: Mr. Chairman, I'm

1 going to move for approval of this item.

2 COMMISSIONER ROSENFELD: Second.

3 CHAIRMAN KEESE: Motion by Commissioner  
4 Moore; second by Commissioner Rosenfeld.

5 All in favor?

6 (Ayes.)

7 CHAIRMAN KEESE: Opposed? Adopted four  
8 to nothing. For whoever happened to submit that  
9 one, it would be nice next time if we knew what  
10 the issue was.

11 COMMISSIONER MOORE: That was Richard  
12 Rohrer, and, Mr. Chairman, and that did come  
13 through the Committee and --

14 CHAIRMAN KEESE: I'm sure it did, and I  
15 understand it's computer modeling. But it was  
16 generically written, and one couldn't tell what  
17 in the world we were approving other than an  
18 extension.

19 COMMISSIONER MOORE: Okay, I'll pass  
20 that on.

21 CHAIRMAN KEESE: Item 29, Brian T.  
22 Castelli. Possible approval of contract 160-01-  
23 001 for \$222,299 to secure a qualified and  
24 experienced consultant to assist in tracking  
25 national energy policy.

1 COMMISSIONER ROSENFELD: I move item 29.

2 CHAIRMAN KEESE: Motion by Commissioner  
3 Rosenfeld.

4 COMMISSIONER MOORE: Second.

5 CHAIRMAN KEESE: Second by Commissioner  
6 Moore.

7 COMMISSIONER MOORE: Only one comment,  
8 and that is that I understand the process that  
9 they went through, and I know the Chairman was  
10 involved in that selection. So I would say I'm  
11 looking forward very much to what can only be  
12 probably a more vigorous and interactive  
13 relationship on the Washington front. And it  
14 couldn't come at a better time.

15 CHAIRMAN KEESE: Thank you. Motion and  
16 second.

17 COMMISSIONER LAURIE: Mr. Chairman, to  
18 clarify, this is to deal with federal issues, is  
19 that correct?

20 CHAIRMAN KEESE: Yes. And the  
21 clarification is here, this is not principally a  
22 lobbying position. This is to work with the  
23 Commission in establishing positions that, as far  
24 as lobbying the Congress, would be handled by the  
25 Washington Office of the State of California.

1                   But, if you want to consider lobbying  
2                   working with the Department of Energy, it's  
3                   working with people at the Department of Energy.  
4                   So it's working with the Commission and the  
5                   Committees to formulate policies that are  
6                   effective back there.

7                   COMMISSIONER LAURIE: And how is his  
8                   work going to be administered?

9                   CHAIRMAN KEESE: It's going to be  
10                  administered through Government Affairs.

11                  MS. MARTIN: Through the Office of  
12                  Governmental Affairs. And I'm the Contract  
13                  Manager, Cecile Martin.

14                  CHAIRMAN KEESE: Cecile Martin.

15                  COMMISSIONER LAURIE: Okay. Very good.  
16                  Thank you.

17                  CHAIRMAN KEESE: And we hope to get that  
18                  coordination that we've been striving for for  
19                  years.

20                  COMMISSIONER LAURIE: Okay, thank you.

21                  CHAIRMAN KEESE: Motion and second. All  
22                  in favor?

23                  (Ayes.)

24                  CHAIRMAN KEESE: Opposed? Adopted four  
25                  to nothing. Thank you.

1 Did we make your time?

2 COMMISSIONER ROSENFELD: Made my time.

3 CHAIRMAN KEESE: Minutes. We have the  
4 minutes of August 8th, August 15th, August 22nd  
5 and August 29th, and they are complying with our  
6 request that they catch up.

7 COMMISSIONER MOORE: Yes, and let me  
8 just say, I owe the Secretariat an apology, which  
9 I publicly make, for my comments before. I know  
10 how hard they work, and I know the mechanical  
11 difficulty that's involved.

12 So, we're all in a kind of a dynamic  
13 tension here trying to make sure we get the  
14 minutes appropriately. And I'm also aware that  
15 there's a lot of editing that has to take place  
16 with regard to my comments, to make sure that  
17 they're sanitized before they come out.

18 (Laughter.)

19 COMMISSIONER MOORE: So, you know, I  
20 know that that takes extra time --

21 COMMISSIONER LAURIE: Or intelligible.

22 COMMISSIONER MOORE: -- to make sure  
23 that I go into the public record with, you  
24 know, --

25 CHAIRMAN KEESE: That is a motion for



1 approval of the minutes of those four dates.

2 COMMISSIONER ROSENFELD: Second.

3 CHAIRMAN KEESE: Second by Commissioner  
4 Rosenfeld.

5 All in favor?

6 (Ayes.)

7 CHAIRMAN KEESE: Opposed? Adopted four  
8 to nothing.

9 Committee and Oversight.

10 COMMISSIONER MOORE: Only one on the  
11 matter before, Mr. Chairman, let me just assure  
12 you that there will be action taken by the  
13 Electricity and Natural Gas Committee during the  
14 break period. And with regard to the data and  
15 that you'll see that around the new year.

16 And second, that for those other items  
17 where I might have to report back to you prior to  
18 my departure from the Commission, I assure you  
19 that if my departure comes before I'm able to make  
20 those reports, I'll come back, and I believe Chief  
21 Counsel's Office will let me do this, to report on  
22 the items that I've been involved in without any  
23 hint of lobbying or anything else.

24 So, my reports that you're expecting  
25 from my Committees, or the other things that I'm

1 involved in, I assure you that I'll finish those  
2 before I physically depart.

3 CHAIRMAN KEESE: Thank you. And --

4 MR. BLEES: It's okay only if you don't  
5 sanitize them.

6 (Laughter.)

7 CHAIRMAN KEESE: In any event, we will  
8 expect to see you here January 2nd.

9 Any other matters here? Chief Counsel's  
10 report.

11 MR. BLEES: I wouldn't dare.

12 CHAIRMAN KEESE: Executive Director's  
13 report.

14 MR. LARSON: Enough's been said.

15 CHAIRMAN KEESE: Public Adviser.

16 COMMISSIONER ROSENFELD: She's gone on.

17 CHAIRMAN KEESE: Public Adviser didn't  
18 show up today.

19 Public comment? There's nobody in the  
20 public left. We've worn them down.

21 The meeting's adjourned.

22 (Whereupon, at 2:00 p.m., the business  
23 meeting was concluded.)

24 --o0o--

25

## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said business meeting, nor in any way interested in outcome of said business meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 2001.

VALORIE PHILLIPS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

□